

TOWN OF RYE – BOARD OF ADJUSTMENT

**Wednesday, July 5, 2023
7:00 p.m. – Rye Town Hall**

***Members Present:* Sandra Chororos, Patricia Weathersby, 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, led the Pledge of Allegiance, introduced Board members, and explained meeting procedures.

II. BUSINESS

Motion by Chris Piela to continue applications 2, 3, 6, 7, 8, 9, and 13 on the agenda to the August 2, 2023 meeting. Seconded by Patricia Weathersby.

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

Approval of Minutes - May 17, 2023

- Page 22, “adhered to”
- Page 25, “change of a gravel drive”
- Page 28, “dwelling coverage”
- Page 4, “Colleen”
- Page 7, “is installed”
- Page 7, “planting plan”
- Page 9, “installed”
- Page 23, “razing”

Motion by Patricia Weathersby to approve the May 17, 2023 meeting minutes as amended. Seconded by John Tuttle.

Vote 4-0-1 (S. Chororos, P. Weathersby, J. Tuttle, S. Crapo in favor, C. Piela abstained)

Approval of Minutes - June 7, 2023

- Page 6, “He explained”
- Page 12, “eave”

Motion by Chris Piela to approve the June 7, 2023 meeting minutes as amended. Seconded by Sandra Chororos.

Vote 4-0-1 (S. Chororos, C. Piela, J. Tuttle, S. Crapo in favor, P. Weathersby abstained)

III. APPLICATIONS

• Request for rehearing and reconsideration by Kathy & Timothy Keane for property owned and located at 5 Cable Road, Tax Map 8.4, Lot 176 per NHRSA 677:2 and the Rye Zoning Ordinance §190-7.3 of the Board of Adjustment’s May 17, 2023 decision denying requested relief from various requirements of the Rye Zoning Ordinance. Public hearing closed during Board discussion on the request.

Chair Crapo explained that moments before the meeting the Board received an email from an abutter, Tracy Banks, via her attorney. He also reviewed the criteria the Board would use in reviewing the request for rehearing.

Member Piela stated that while he was not present for the meeting, he believes the Board made an error in using, “too much relief” as criteria for denying the application; the Board could have better articulated the reasons for the denial.

Chair Crapo explained that the Board would be deciding whether the application requires a full or limited rehearing or a denial.

Member Piela explained that, in reviewing the minutes, he’s not sure that he’d make a different determination, but the aforementioned was the one error he noticed in the Board’s analysis of the application.

Chair Crapo explained that a rehearing wouldn’t necessarily change the vote.

Member Weathersby noted that the Board didn’t have testimony about the effect on property values, which could have been addressed and discussed more artfully. She added that the Notice of Decision was deficient and could have reflected different points from the discussion. She expressed that the Board could have more thoroughly articulated the legal standards for the criteria. She explained that there’s not enough on the record to support some of the conclusions that the Board came to and it would be good to clear up the record and more thoroughly discuss certain points. She also discussed possible processes for drafting a tighter Notice of Decision.

Referring to the abutter’s letter, Member Piela wondered if a rehearing would give that abutter an opportunity to formally raise objections.

Chair Crapo explained that if the Board wanted to craft a limited rehearing, they could. He explained his opinion that unless the Board finds the abutter didn't receive notice, they should not have the opportunity to raise objections at a subsequent rehearing.

Chair Crapo discussed the differences between holding a limited versus full rehearing. He added that he's leaning toward a full rehearing.

Member Weathersby agreed, stating that the Board should elaborate more on their reasons.

Member Piela discussed the importance of abutter notices.

Has there been an error of law or new information that has come to light that could have had a different outcome at the meeting that warrants a rehearing?

Sandra Chororos - Yes

Patricia Weathersby - Yes

Chris Piela - Yes

John Tuttle - Yes

Shawn Crapo -Yes

Motion by John Tuttle to grant the request for rehearing by Kathy & Timothy Keane for property owned and located at 5 Cable Road, Tax Map 8.4, Lot 176. Seconded by Chris Piela.

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

1. 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 presented his application to the Board and explained that he and his wife, Susan Vogelsang, live in Bethesda, Maryland, but have owned this property for years.

Mr. Treseder explained that he's requesting variances to do work on the house which is entirely in the setback. He discussed the history of the property, noting that Meadow Lane was constructed after the house and that the entire length of Meadow Lane is along the property. He explained that he would like to add an addition off the back of the existing house and in doing so is trying to meet the spirit of the ordinance.

Member Weathersby summarized that Mr. Treseder was before the board in May, contemplating the placement of the driveway which the Board couldn't advise. She observed that Mr. Treseder seemed to be back with the same plan.

Mr. Treseder clarified that he's presented a new site plan.

Chair Crapo clarified that the new plan is dated 5/22/23.

Mr. Treseder commented that an advantage to the new plan is that he no longer needs relief for a driveway being closer than 100' to the corner. Also, by making it a driveway, not a parking pad, it can stay less than 14' in width. The only issue is in having a second driveway.

Chair Crapo explained that Mr. Treseder's driveway on Central Road is grandfathered; if you were proposing to tear down and rebuild, he would be subject to the zoning ordinance, but the proposed driveway is more adherent to that than the existing driveway.

Mr. Treseder explained that he's proposing a turnaround within the 40' setback. He pointed out that he could put parking on the property that isn't within the setback but it seems appropriate to have parking closer to the structure.

Member Weathersby asked if the proposed parking is for all vehicles.

Mr. Treseder explained that the parking would be only for the ADU, the main house would still use the Central Road driveway.

Chair Crapo and Mr. Treseder discussed the existing and proposed pavement.

Mr. Treseder stated that he suspects he'll be required to use some dry wells to take care of roof drainage.

Member Weathersby clarified that the applicant is looking for relief from parking in the front yard, new parking on Meadow Lane, the ADU addition in front as well as a general expansion of a non-conforming lot.

Mr. Treseder confirmed and discussed the requirement for two additional ADU parking spaces and explained that he could place them elsewhere.

Chair Crapo explained that parking spaces are a matter for the Planning Board, but the proposal of the 20x42' area is before the ZBA because it's in the setback.

Chair Crapo asked if the location of the new proposed driveway on Meadow Lane has been presented to Public Works.

Mr. Treseder explained that he got a rejection from Public Works for the original proposal, but he hasn't gone back a second time. It was rejected for being too close to the intersection, for being too wide, and for being a second driveway.

Chair Crapo clarified that the relief is needed because of the 40' setback on both sides of the addition as well as the driveway.

Mr. Treseder pointed out that the neighbor across the street was in a similar situation and was granted relief. He explained his hope to complete this project in order to move into the house itself and use the ADU as a rental property.

Chair Crapo opened to the public at 7:41 PM.

Stacey Smith of 51 Central Road stated that the addition of the ADU is lovely and will be an improvement to the property. She expressed her concern regarding parking. She explained that the current house and driveway is very restricting for the five people who currently live there and who use Meadow Lane as their driveway. She sent a letter explaining her frustration regarding cars parking in Meadow Lane. Ms. Smith asked if approving this application would allow the parking on the property to be addressed so everyone has a place to park on the property as opposed to the street.

Chair Crapo explained that, as proposed, some of the pavement would be going away, but with the addition of a 20x42' pad off of Meadow Lane.

Mr. Treseder explained that because parking is stacked, there won't be less parking, it would just be closer to Central Road.

Ms. Smith explained that the stacked parking is the cause of the parking issue on Meadow Lane.

Member Weathersby explained that what's before the Zoning Board is the relief for putting in the second driveway and putting in the ADU, both of which are in the setback. She explained the Board doesn't have any jurisdiction over Central Road parking. She also explained that the Planning Board will take a more holistic view of the project when the applicant goes for ADU approval. She also noted that if parking is happening in a right of way, police enforcement may be involved.

Speaking to Mr. Treseder, Chair Crapo explained that he may be able to add additional parking that wouldn't require variance relief.

Chair Crapo closed to the public at 7:46 PM.

Member Tuttle commented that the application seems reasonable and the parking seems to be in a better location off of Central Road.

Member Weathersby agreed it's a logical place for parking, there is still plenty of room, still front yard, and Meadow Lane is infrequently traveled, so there are no concerns regarding site lines or public safety.

Member Chororos commented that it's much further away from Central Road than where it was first proposed.

Chair Crapo stated that he can't speak for the Planning Board, but this layout probably makes more sense than if they were to propose the ADU and a bigger parking area off of the Central Road lot that would accommodate all vehicles on the property. He added that the Public Works denial seems to be a technicality that the applicant needs relief first

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

- Sandra Chororos – Yes
- Patricia Weathersby – Yes
- Chris Piela – Yes
- John Tuttle – Yes
- Shawn Crapo – Yes

2. The spirit of the ordinance is observed:

- Sandra Chororos – Yes
- Patricia Weathersby – Yes
- Chris Piela – Yes
- John Tuttle – Yes
- Shawn Crapo – Yes

3. Substantial justice is done:

- Sandra Chororos – Yes
- Patricia Weathersby – Yes
- Chris Piela – Yes
- John Tuttle – Yes
- Shawn Crapo – Yes

4. The values of surrounding properties are not diminished:

Sandra Chororos – Yes
Patricia Weathersby – 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
Patricia Weathersby – 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
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

7. The proposed use is a reasonable one.

Sandra Chororos – Yes
Patricia Weathersby – 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
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

Motion by John Tuttle to approve the application for property owned and located at 59 Central Road, Tax Map 12, Lot 35 as advertised and presented. Seconded by Chris Piela.

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

Member Tuttle amended his motion to omit “10+/- and”. Seconded by Chris Piela.

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

2. 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 23.66’, chimney 21.86’, deck stairs 15.84’, and deck 14.80’ 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 +/- 0 ft (Jenness Avenue side) and +/- 1 ft (Surf Lane side) 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, overhang 4.50’ house 5.73’, steps 12.35’, deck stairs 8.16’, 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 1 off-street parking space within the front setback where that is prohibited. Property is in the General Residence and Coastal Overlay Districts, and SFHA Zone AE(8). Case #06a-2023.

Application continued to the August 2, 2023 meeting (see motion above).

3. 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.

Application continued to the August 2, 2023 meeting (see motion above).

4. Robert & Cynthia Scarano property owned and located at 1481 Ocean Blvd, Tax Map 13, Lot 54 request an equitable waiver of dimensional requirements per RSA 674:33-a from §190-6.3.A/B to convert a previously approved bulkhead to a room; from §190-2.4.C(1) for patio at 5.31’ from the rear boundary line where 12+/- was approved and 30’ is required; and from §190-2.4.C(2) for a room at 14.42’ where a bulkhead at 14.39’ was approved; for a patio at 13.35’ from the side boundary where 9.67’ was approved and 20’ is required. Property is in the General Residence, Coastal Overlay and SFHA Zone AO(3). Case #21a-2023.

5. Robert & Cynthia Scarano for property owned and located at 1481 Ocean Blvd, Tax Map 13, Lot 54 request variances from §190-6.3.A/B to convert a previously approved bulkhead to a room; from §190- 2.4.C(1) for patio 5.31' +/- , a hot tub 7.02' and a retaining wall 24.86' from the rear boundary where 30' is required; from §190-2.4.C(2) for a studio 14.42' (overhang 13.56'), a patio 13.35'; a hot tub 6.85'; a mini/split 12.64' and a retaining wall 5.25' from side boundary where 20' is required. Property is in the General Residence, Coastal Overlay and SFHA Zone AO(3). Case #21a-2023.

Attorney **Tim Phoenix** of Hoefle, Phoenix, Gormley & Roberts presented the application on behalf of the applicants, **Robert & Cynthia Scarano**, who were also present. He introduced **Paige Libbey** of Jones & Beach Engineering, who did the technical work for this application.

Attorney Phoenix explained that he was before the Board in 2021 for the same application. He explained that since 2021 it was discovered that the studio building needed additional variances, which is the reason he requested an equitable waiver. The patio, mini split, and retaining wall around the septic have not been installed so are not subject to a request for an equitable waiver.

Chair Crapo asked if the building was renovated. Attorney Phoenix clarified that it was torn down.

In response to Attorney Phoenix, Chair Crapo stated that it would be cleanest to move forward with all variances since the majority of the relief has yet to be constructed.

Attorney Phoenix presented the relief chart, revised on 6/8/23, and pointed out the previously granted relief as well as the changes that initiated this application to the Board.

Attorney Phoenix distributed copies of the previously approved floor plan and gave a history of the property and previous application. He explained that the applicants received variances in 2021 for setback relief in the rear yard, side yard, etc. The 2021 Notice of Decision was included in the most recent submission. He explained that the septic has been approved and installed since then and the bunkhouse has been demolished. At the time of construction, builders discovered a significant ledge which initiated changes in the original plan. He explained that the studio was going to be on the foundation with a basement and bulkhead providing storage, but they took the area out of the main house. Instead, they chose to use slab, which eliminated significant storage. When the bulkhead was removed, they put the bathroom where the bulkhead was. Last June, the applicant filed a building permit application with these plans, and a permit was granted and issued. However, the Building Inspector found that the building as constructed was not what was approved in 2021, notably the bathroom where the bulkhead would have been. Attorney Phoenix explained that the Scaranos didn't know they couldn't do this.

Attorney Phoenix also explained that the Building Inspector issued a denial to build a new house because he thought the studio was a second dwelling on the lot. Attorney Phoenix wrote a letter explaining why that was not the case. He explained to the Board that the Building Inspector's May 16, 2023 denial letter is what led them to request variances for the presented items which were previously granted.

In response to Member Weathersby's question regarding abutting neighbors, **Robert Scarano** explained that they've spoken with the Blanchards, the direct abutter, provided them with plans, and they're in support of the project. He explained that the neighbor behind has also been involved, has the plans, and is in support of the project. The last abutter, to the far right, passed away last year and the brother, a resident of Rye, is taking over the property. Mr. Scarano has not had a conversation with him yet.

Ms. Libbey pointed out the placement of retaining walls, described the grading of the property, and explained where they picked up the septic to avoid the flood zone. She also pointed out the difference in size between the old and new patio, which will be made of permeable pavers.

Speaking to Ms. Libbey, Chair Crapo asked if the drainage design would allow water pressure to drain across the driveway.

Ms. Libbey explained that she's been working with the contractor who's building the wall, and there will be a stone trench behind the wall to bring drainage under the driveway.

Attorney Phoenix discussed the bulkhead and retaining wall. Referring to the relief chart, he explained that the requests are minor in terms of the nature of the relief. The most significant change is the bulkhead replaced by the bathroom. He stated that it still qualifies for relief as it's a variance that was approved previously.

Chair Crapo asked about regulations regarding setbacks and exposed ledge.

Member Weathersby asked if the retaining wall in front will be flattened and slightly sloped and if there is going to be fill in front.

Ms. Libbey explained that there would be no fill, and the purpose of the wall was to stay out of the tidal buffer.

Member Weathersby asked if the small building is still an artist studio, which was confirmed. She asked about the need for a hot tub at an artist's studio.

Cynthia Scarano explained that it's their backyard and barbeque area and there isn't really access from the main house, so it serves as a recreation area.

Member Chororos asked the applicants if they are proposing a kitchen.

Mrs. Scarano explained that there would be a refrigerator and cabinetry, but no cooking facilities as it's not set up as a dwelling unit. She explained that they sent a letter to the building commissioner stating that it wouldn't be used as a dwelling unit.

Attorney Phoenix explained communication regarding the area and that it's not a dwelling unit.

Chair Crapo clarified that the approval states that the property is not to become a dwelling unit.

Chair Crapo, referring to Mr. Marsden's rescinded April 26 denial letter, asked if an additional denial was issued.

Attorney Phoenix explained that it was a denial of the building permit for the main house out of concern that he'd be permitting two homes on one lot.

Attorney Phoenix discussed each of the variance criteria related to this application.

Chair Crapo, discussing previous approvals, noted that the septic approval is dated 7/7/21 and explained that any relief that's expired needs to be modified in order to dig up and lift the septic.

Ms. Libbey explained that the septic doesn't have to be lifted, the rest of the yard has to be lifted and the septic would be installed as is. She added that the only other permit that's required is the State Shoreline Permit for NHDES, and they've already filed an amendment for that permit.

Member Piela asked for the latest version of the structure where the bulkhead would be a bathroom. He also asked if the outdoor rinsing station would be another structure.

Ms. Libbey explained that the rinsing station would just include fencing on top of the patio that's already there.

Member Piela asked about the standing heater by the proposed hot tub.

Mr. Scarano explained that it's a warming heater that uses a propane tank, not a structure.

Member Chororos asked if there is anything prohibiting the applicant from moving the jacuzzi away from the setback.

Mr. Scarano explained that there is a propane tank in the ground in that area and the jacuzzi is deliberately moved away from that in case it ever needs to be replaced.

Ms. Libbey, referring to sheet c3, explained how that choice affected the patio design.

Member Weathersby asked why the hot tub couldn't go on the patio to the right.

Mrs. Scarano explained that the neighbors requested that location.

Mr. Scarano explained that the Blanchards have a deck above, where they spend significant time. They tried to place the hot tub in a place that would not disturb them. He explained that if they put the hot tub on the patio, it would be even with their deck.

Member Weathersby commented that if the hot tub were put on the back right of the patio, closer to the driveway, it would be further from Blanchards'.

Ms. Libbey added that when designing, they were also thinking of snow storage.

Member Weathersby commented that this is a self-created hardship and it is very rare that the Board approves patios and decks so close to the property line.

Chair Crapo opened to the public at 8:36; hearing no comments, he closed the public session.

Chair Crapo observed that the Board may wish to vote on each of the variances separately.

Member Piela wondered whether or not a hot tub is considered a structure. The Board determined that the hot tub should be treated as a structure.

Member Piela discussed the increase in bulk at the rear of the building and commented that the rinsing station will double the size of the room.

Member Tuttle stated that the fence doesn't count as a structure.

Member Piela pointed out that the rinsing station was never granted relief, nor is it being asked for, but it's on the plans.

The Board discussed the bulkhead's dimensions and whether relief is needed for the rinsing station. Member Tuttle stated that he doesn't think the rinsing station would need a variance as it doesn't qualify as a structure.

Member Weathersby observed there is plumbing attached to the back wall, which doesn't need to be approved, as well as fencing and two walls, which don't need to be approved if under 6'.

In response to Member Chororos' question, Chair Crapo clarified that the agenda notice is a more current version of the relief request.

Ms. Scarano stated that the bulkhead is gone because they couldn't get a hot water heater in the basement and there was supposed to be space under the bulkhead.

Mr. Scarano clarified that the hot water heater and mechanicals are where the old bathroom was proposed. The bathroom where the bulkhead was includes a toilet, shower, and sink.

Chair Crapo stated that the Board doesn't have a new proposed layout without the bulkhead but with the bathroom.

Member Weathersby explained that what's been described is a ¾ bath where the bulkhead was, some cabinetry, a refrigerator, a dishwasher, and a recreation room.

Chair Crapo described the definition of a dwelling, which does not preclude people from sleeping there in cots or sleeping bags.

Member Weathersby commented that she's not sure that's true.

Chair Crapo asked Attorney Phoenix for clarification regarding the equitable waiver request.

Attorney Phoenix explained that the equitable waiver would only apply to the building since nothing else is built yet. If the Board were to grant all variances under five, it would include the building with that addition on it, allowing him to throw out without prejudice the request for an equitable waiver for the building.

Member Weathersby asked Mr. Scarano to describe the mini-split.

Mr. Scarano explained that the mini split runs both heat and air conditioning, attaches to the wall, and has a low decibel level. He explained that it's the most quiet unit on the market. The mini split would be built into a cabinet that attaches to the wall. From the exterior of the building, it would be a white cabinet that fits into the 8x8' room and is 2' wide, 39" long, 31" high, and has 3.5" between the wall and the unit itself. It sits on rubber mounted placate preventing vibration and is flush with the exterior wall, facing the Blanchards.

Chair Crapo observed that the building is not fully parallel to the lot line, so a mini split is attached to what will be a bathroom rather than a bulkhead.

Attorney Phoenix explained that the mini split wasn't approved last time, but is an expansion of what was approved.

Mr. Scarano explained that the electrical for the hot tub is a plug-in, underground to the panel, with no direct wiring.

Chair Crapo explained that conditions of existing variances may apply, and may need to be added to some of the new relief.

Member Weathersby explained that she is sympathetic to most everything but cannot support a hot tub in that location. She expressed concern regarding the potential noise in close proximity to the neighbor's home. She noted that it could diminish the property value of abutting properties depending on the level of activity and the proposed use of a hot tub in that location is not a reasonable one. She explained that the property can be reasonably used in strict conformance with the ordinance and no variance is necessary to enable reasonable use of the property without a hot tub in that location and individual loss to the applicant is outweighed by the general public.

Member Chororos added that there's no hardship to move the hot tub elsewhere. She stated that she was not opposed to the rest of it.

Chair Crapo commented that without the Building Inspector present to clarify, he's not sure if a hot tub is considered a structure.

Member Piela expressed his concern with putting the hot tub there, considering the distribution of noise and how it would affect abutters so close to the neighbor's side yard. He noted that if the hot tub were closer to the driveway there might be more noise buffer. He added that everything else makes sense and he's sympathetic to the bump out.

Chair Crapo discussed the dimensions of the new patio and whether relief would be required if they placed the hot tub on the patio.

Chair Crapo explained that the Board would vote on §190-2.4.C(1)(2) for the hot tub separately. He called for a vote on all variances except for the hot tub:

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

Sandra Chororos – Yes
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

2. The spirit of the ordinance is observed:

Sandra Chororos – Yes
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

3. Substantial justice is done:

Sandra Chororos – Yes
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

4. The values of surrounding properties are not diminished:

Sandra Chororos – Yes
Patricia Weathersby – 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
Patricia Weathersby – 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
Patricia Weathersby – Yes

Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

7. The proposed use is a reasonable one.

Sandra Chororos – Yes
Patricia Weathersby – 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
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

Chair Crapo called for a vote on §190-2.4.C(1) and §190-2.4.C(2):

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

Sandra Chororos – No
Patricia Weathersby – No
Chris Piela – No
John Tuttle – Yes
Shawn Crapo – No

2. The spirit of the ordinance is observed:

Sandra Chororos – No
Patricia Weathersby – No
Chris Piela – No
John Tuttle – Yes
Shawn Crapo – No

3. Substantial justice is done:

Sandra Chororos – No
Patricia Weathersby – No
Chris Piela – No
John Tuttle – Yes
Shawn Crapo – No

4. The values of surrounding properties are not diminished:

Sandra Chororos – No
Patricia Weathersby – No
Chris Piela – No
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 – No
Patricia Weathersby – 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 – No
Patricia Weathersby – No
Chris Piela – No
John Tuttle – Yes
Shawn Crapo – No

7. The proposed use is a reasonable one.

Sandra Chororos – No
Patricia Weathersby – No
Chris Piela – No
John Tuttle – Yes
Shawn Crapo – No

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

Sandra Chororos – No
Patricia Weathersby – No
Chris Piela – No
John Tuttle – Yes
Shawn Crapo – No

Motion by Chris Piela to approve the application by Robert & Cynthia Scarano for property owned and located at 1481 Ocean Blvd, Tax Map 13, Lot 54 for variances from §190-6.3.A/B to convert a previously approved bulkhead to a room; from §190-2.4.C(1) for

patio at 5.31'+/- and a retaining wall 24.86' from the rear boundary where 30' is required; from §190-2.4.C(2) for a studio 14.42' (overhang 13.56'), a patio 13.35', a mini/split 12.64' and a retaining wall 5.25' from side boundary where 20' is required with the following condition: the studio will not become a dwelling unit. Seconded by John Tuttle.

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

Motion by Chris Piela to deny the relief requested by Robert & Cynthia Scarano property owned and located at 1481 Ocean Blvd, Tax Map 13, Lot 54 from §190- 2.4.C(1) for a hot tub 7.02' and from §190-2.4.C(2) for a hot tub 6.85' from the side boundary. Seconded by Patricia Weathersby.

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

The Board took a break and reconvened at 9:21 PM.

6. Grail Real Estate LLC for property owned and located at 6 Airfield Drive, Tax Map 10, Lot 15 requests an appeal of administrative decision per NHRSA 677:2 and the Rye Zoning Ordinance §190-7.3 of the building inspectors 4-19-2023 letter which determined that the uses for the property are materially different from the uses presented to the Planning Board in 2021. Property is Commercial District, MultiFamily Overlay District. Aquifer Protection Overlay and Berry's Brook Watershed. Case #23-2023.

Application continued to the August 2, 2023 meeting (see motion above).

7. Michael R. Parsons & Katelyn B. Randall for property owned and located at 34 Perkins Road, Tax Map 5.2, Lot 148 request variances from §190-2.4.C(1) for a pool 23.5' from the rear boundary where 28.9' is required; from §190-2.4.C.(2) for a pool 17.1' from the right side boundary where 20' is required; and from §190-2.4.C(5) for impervious coverage of 51.9% where 30% is allowed. Property is in the General Residence and the Coastal Overlay District. Case #28-2023.

Application continued to the August 2, 2023 meeting (see motion above).

8. Bluestone Properties of Rye, LLC for property owned and located at 33 Sagamore Road, Tax Map 24, Lot 6 requests a one-year extension to the relief for a special granted on 8-26-2020. Property is in the Business District. Case #30a-2020.

Application continued to the August 2, 2023 meeting (see motion above).

9. Bluestone Properties of Rye, LLC for property owned and from § at 33 Sagamore Road, Tax Map 24, Lot 6 requests a one-year extension to the relief for variances granted on 8-26-202. Property is in the Business District. Case #30b-2020.

Application continued to the August 2, 2023 meeting (see motion above).

10. Rachel and Jonathan Fox for property owned and located at 73 Washington Road, Tax Map 17, Lot 68 request variances from §190-6.2. B for expansion of a nonconforming lot by installing a 12 x 22 patio and from §190-2.3.C(5) for lot coverage of 16.695% where 15.802% exists and 15% is allowed. Property is in the Single Residence District. Case #32-2023.

Rachel (Ann) Fox presented the application and described the proposed bluestone patio. She explained that she's spoken with each of the direct abutters who are in support of this project.

Member Chororos asked for clarification on whether the plan is to install a 12x22' or 12x23' patio.

Mrs. Fox explained that it would be 12x23', which is what's reflected in the presented lot coverage.

Member Chororos observed that the patio looks to be a big square and asked if it was connected to the stairs.

Mrs. Fox explained that there are pervious stepping stones from the small stairway on the left and the actual patio is 12x23' off of the big stairs to the right. She also explained that drainage heads down towards the back of the property, and there are no drainage issues. She added that they have a very small lot, which is why they're asking for the variance.

Chair Crapo asked if the patio is connected to both sets of stairs.

Mrs. Fox explained the whole thing would be in front of the right-hand stairs

Chair Crapo opened to the public at 9:26 PM.

Scott Marion of 71 Washington Road, the Fox's direct abutter, and closest neighbor, expressed his support of the project.

Chair Crapo explained that Mr. Marion submitted a letter of support for the project.

Ralph and Cindy Hickson of 91 Washington Road also expressed their support of the project.

Chair Crapo explained that a letter of support was submitted to the Board from Matt and Natasha Goyette, another abutter.

Chair Crapo closed the public session at 9:28 PM.

Member Chororos noted that Suzanne McFarland of the Rye Conservation Commission stated that it meets RCC approval.

Member Piela expressed his appreciation for the letters of support from abutters. Chair Crapo agreed.

Chair Crapo called for a vote on §190-6.2. B and §190-2.3.C(5)

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

Sandra Chororos – Yes
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

2. The spirit of the ordinance is observed:

Sandra Chororos – Yes
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

3. Substantial justice is done:

Sandra Chororos – Yes
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

4. The values of surrounding properties are not diminished:

Sandra Chororos – Yes
Patricia Weathersby – 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
Patricia Weathersby – 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
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

7. The proposed use is a reasonable one.

Sandra Chororos – Yes
Patricia Weathersby – 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
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

Motion by John Tuttle to approve the application by Rachel and Jonathan Fox for property owned and located at 73 Washington Road, Tax Map 17, Lot 68 as presented. Seconded by Chris Piela.

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

11. Three Meters LLC for property owned and located at 22 Pioneer Road, Tax Map 24, Lot 94 requests an appeal of administrative decision per NHRSA 677:2 and the Rye Zoning Ordinance §190-7.3 of the building inspector’s letter of May 18, 2023 in which he determined that the existing property has been used as a single-family home with a home based business historically which means the proposed construction would be a change of use. Property is in the Single Residence District. Case #33-2023.

Brandon Goodspeed of Sagamore Road in Rye and **Bob James** of Portsmouth explained that they purchased the property located at 22 Pioneer Road, a screen printing shop, a few months

ago. They submitted a plan to the Building Inspector to raze and rebuild the building within the same footprint. They explained the plan was denied for changing a single-family residence into a commercial, and they are before the Board appealing that decision. Their submission included a letter from the Rockingham Planning Commission which states this is a commercially-zoned property and the town of Rye taxes it as such. They explained that they also have a letter from Realty Trust, who facilitated the purchase, which shows it's a working screen print shop with three offices. They clarified that they're exclusively discussing the property at 22 Pioneer Road, a screen print shop. They explained that it's a dilapidated building filled with junk that they're trying to remediate.

Mr. James clarified that the only reason they're before the Board is to contest the decision made by Mr. Marsden and they believe the presented information proves the property has been operating and taxed as a commercial property for the past 70 years.

Mr. James and Mr. Goodspeed explained that they're looking to use the property as an office space with no incoming or outgoing customers.

Chair Crapo explained that to grant an administrative appeal, the applicants would need to help the Board decide that there has been an error in any order, requirement, decision, or determination by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16.

Chair Crapo asked to clarify that the layout of this property includes several buildings, and the relevant building is that with the parking lot. The applicants confirmed this is correct.

Member Weathersby referenced the Building Inspector's letter dated May 18, 2023.

Member Chororos asked if there would be any clients, customers, or employees.

The applicants explained there would be none; they own commercial real estate self-storage facilities and work from home. They're looking to move their home offices out of their home. They also explained they have a third partner who was not present, who would also be using the space as an office.

Chair Crapo opened to the public at 9:40 PM.

Abbie Attaya and her husband Mark, direct abutters, expressed a complaint that they were never notified of the purchase of 22 Pioneer Road.

Chair Crapo explained that the only matter before the Board is the Building Inspector's determination that the property at 22 Pioneer Road was a residence with a home-based business versus a commercial business.

Ms. Attaya testified that the property at 22 Pioneer Road was a single-family residence with a home-based business, it was not a business use of that property. She also stated that the applicants are in possession of a trailer that belongs to her. The Board clarified that they cannot help her with this matter.

Speaking to Ms. Attaya, Chair Crapo asked for an explanation of the layout of the inside of the business, which appears to be a working screen shop.

Ms. Attaya described the interior of the property where her father operated his business and explained that her father had given her that property as a storage space for her personal items. She explained that it was adjacent to her home and when the state shut the business down in 2019 it was no longer grandfathered as a business.

Chair Crapo asked when the property was last used as a business.

Ms. Attaya explained it was last used as a business in March 2020. Ms. Attaya's husband explained they were never notified that it was sold.

After some discussion, Chair Crapo closed to the public at 9:51 PM.

Chair Crapo explained that a business that ceases to operate loses its status after three years. He explained that there are no presented documents stating that there was a change of use to a residence and it was last used as a commercial business.

Member Weathersby observed that the description of the building does not sound like it was set up as a dwelling. She added that she's been to the business, she's familiar with the property, and when she was there last it was very much operating as a business.

Chair Crapo agreed and explained that he'd had similar experiences at that business. He acknowledged that the business owner lived on the general property, but it was never his belief that he lived in that part of the property.

Member Chororos noted that the Rockingham Planning Commission states this property has been operating as commercial property for decades.

Chair Crapo discussed Mr. Marsden's decision with the applicants.

Mr. James explained this property has been zoned residential on the tax maps but has been taxed as a commercial property and operated as commercial property for 70 years. He explained that Mr. Marsden is getting his zoning information exclusively from the the tax map, but the actual use and all supporting documents support it as commercial property.

Chair Crapo reclosed to the public at 9:56 PM.

Has there been an error in any order, requirement, decision, or determination by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16?

Sandra Chororos – Yes
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

Motion by Patricia Weathersby to grant the administrative appeal of Three Meters LLC for property owned and located at 22 Pioneer Road finding that the building inspector’s letter of May 18, 2023 in which he determined that the existing property has been used as a single-family home with a home based business historically was incorrect. Therefore, a business use is not a change of use. Seconded by Chris Piela.

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

The Board provided the applicants’ guidance in their resubmittal of a building permit.

12. Martha & Gerald Eckman for property owned and located at 931 Ocean Blvd, Tax Map 20.2, Lot 142 request a variance from §190-2.4.C(2) to install a generator 2’ from the side boundary where 20’ is required. Property is in the General Residence and Coastal Overlay District. Case #34-2023.

Mr. Eckman presented his application to the Board and explained his need to install a generator. He explained that a generator company came to evaluate where best to place the generator, as marked on the submitted map. He explained that there is nowhere outside of the setback that it could be placed, other than the middle of the front lawn or in the middle of the lawn nearest Ocean Boulevard, which would be a detriment to the applicant as well as their abutters.

Member Chororos asked the applicant if he’s spoken with the abutter, Jarvis.

Mr. Eckman explained that he has a note from the abutter that was Jarvis in the application, which states they have no problem with the generator.

Member Piela asked if he was referring to lot 37 on the map. Mr. Eckman confirmed and explained that Chas Porter and Nora Hacks are the direct abutters.

Mr. Eckman explained that the distances from the house were dictated by the generator company and the propane company

Chair Crapo asked where the propane is going to be.

Mr. Eckman, referring to the picture, explained the propane tank that currently serves the house is behind a diamond fence, but in order to support the generator, they would need another bottle of propane which brings the location of the propane closer to the generator but within the setback approved by propane company.

Chair Crapo asked if that would be within the fencing.

Mr. Eckman confirmed and explained that they'd remove the fence and build a new fence around the two tanks.

Member Weathersby asked if they would put down a pad for this. Mr. Eckman responded that he would and that there was no flood plane there.

Mr. Eckman, in response to Member Chororos' request for the dimensions, explained that it's a 20,000-watt generator and not very large. He guessed it might be 18x30.

Chair Crapo opened to the public at 10:07 PM, hearing no comment, the public session was closed.

Member Tuttle reported the generator's dimensions are 47x26.

Member Piela discussed the noise of the generator and commented that he now doesn't consider it relevant, due to the abutters' letter of support.

Chair Crapo called for a vote on a variance from §190-2.4.C(2):

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

Sandra Chororos – Yes
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes

Shawn Crapo – Yes

2. The spirit of the ordinance is observed:

Sandra Chororos – Yes
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

3. Substantial justice is done:

Sandra Chororos – Yes
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

4. The values of surrounding properties are not diminished:

Sandra Chororos – Yes
Patricia Weathersby – 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
Patricia Weathersby – 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
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

7. The proposed use is a reasonable one.

Sandra Chororos – Yes
Patricia Weathersby – 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
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

Motion by Chris Piela to approve the application by Martha & Gerald Eckman for property owned and located at 931 Ocean Blvd, Tax Map 20.2, Lot 142 as presented. Seconded by John Tuttle.

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

13. Keith Bridge for property owned and located at 165 Central Road, Tax Map 12, Lot 21 request variances from §190-2-3.C(2) for a house 18'-16" from the side boundary where 20' is required; from §190- 20.3.C(3) for a house 36' from the front boundary where 40' is required; from §190-6.3.A to raise the existing 39' ranch 12" to obtain 7'6" height in basement on a nonconforming lot. Property is in the Single Residence and Wellhead Protection Area. Case #35-2023.

Application continued to the August 2, 2023 meeting (see motion above).

14. David Repczynski & Kimberly Cassidy for property owned and located at 60 Tehias Rd, Tax Map 16, Lot 34 request variances from §190-2-3.C(1) for a shed 10' from the rear boundary where 30' is required; from §190-2-3.C(2) for a shed 5' from the side boundary where 20' is required and from §190-2- 3.C(5) for dwelling coverage where 16.4% currently exists, 17% is requested and 15% allowed. Property is in the Single Residence District, Aquifer and Berry's Brook Watershed. Case #36-2023.

Mr. Repczynski presented his application and explained that he's discussed the proposed shed with the neighbors most impacted, the Balbonis, who have no problem with it. He explained that he's never spoken with his other neighbors, but that there are many other sheds in the neighborhood and it would not be unique. He explained that the shed would conform with the current look of the home and adds value to the home due to the increased square footage and

storage. Mr. Repczynski discussed impervious coverage and explained that it was non-compliant when he purchased the house.

Member Weathersby asked if there would be any plumbing. Mr. Repczynski explained there would be no plumbing.

Member Weathersby observed that the notice requests dwelling coverage of 17%, but the applicant needs lot coverage of 17%.

Chair Crapo asked if the wood storage structure is going to move somewhere else.

Mr. Repczynski pointed to where the wood storage would be located and explained that the shed and wood pile would not encroach on the ten feet that he's requesting. He also discussed swale in the backyard and the pitch of the yard in terms of stormwater management and drainage.

Chair Crapo opened to the public at 10:24 PM. Hearing no comment, the public session was closed.

Chair Crapo called for a vote on the requested variances:

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

Sandra Chororos – Yes
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

2. The spirit of the ordinance is observed:

Sandra Chororos – Yes
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

3. Substantial justice is done:

Sandra Chororos – Yes
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

4. The values of surrounding properties are not diminished:

Sandra Chororos – Yes
Patricia Weathersby – 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
Patricia Weathersby – 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
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

7. The proposed use is a reasonable one.

Sandra Chororos – Yes
Patricia Weathersby – 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
Patricia Weathersby – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

Motion by Sandra Chororos to approve the application by David Repczynski & Kimberly Cassidy for property owned and located at 60 Tehias Rd, Tax Map 16, Lot 34 as presented. Seconded by Chris Piela.

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

Motion by John Tuttle to adjourn. Seconded by Chris Piela. All in favor.

Respectfully Submitted,
Emilie Durgin