

## **TOWN OF RYE – BOARD OF ADJUSTMENT**

**Wednesday, August 2, 2023**

**7:00 p.m. – Rye Town Hall**

***Members Present:*** Gregg Mikolaities, Chris Piela, Patrick Driscoll, John Tuttle, Sandra Chororos

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

### **I. CALL TO ORDER**

Patrick Driscoll, acting Chair, introduced board members and led the Pledge of Allegiance. Chair Driscoll reviewed the meeting agenda and explained procedures.

### **II. BUSINESS**

#### *Approval of Minutes - June 21, 2023*

- Page 11, strike “2-”

**Motion by John Tuttle to approve the June 21, 2023 minutes as amended. Seconded by Chris Piela.**

**Vote 4-0-1** (C. Piela, P. Driscoll, J. Tuttle, S. Chororos in favor, G. Mikolaities abstained)

#### *Approval of Minutes - July 5, 2023*

- *No corrections*

**Motion by Chris Piela to approve the July 5, 2023 minutes. Seconded by Sandra Chororos.**

**Vote 4-0-1** (C. Piela, P. Driscoll, J. Tuttle, S. Chororos in favor, G. Mikolaities abstained)

#### *Continuations*

**Motion by John Tuttle to continue the applications submitted by Michael R. Parsons & Katelyn B. Randall and Brenda Dale to September 6, 2023. Seconded by Patrick Driscoll.**

**Vote 5-0-0** (G. Mikolaities, C. Piela, P. Driscoll, J. Tuttle, S. Chororos in favor)

Chair Driscoll and Planning/Zoning Administrator Reed explained that the board is waiting for a meeting date to schedule items 1, 2, and 15 on the agenda, and items 3 and 16 will be continued on September 6, 2023.

### III. APPLICATIONS

1. Leigh & Darren D'Andrea for property owned and located at 0 Jenness Avenue, Tax Map 8.4, Lot 48 request variances from §190-2.4.C(1) for 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.

*Request to continue to the next available meeting date.*

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

*Request to continue to the next available meeting date.*

3. 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. Request for Continuance to September 6, 2023 meeting.

*Application continued to September 6, 2023 (see motion above)*

4. 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 exception granted on 8-26-2020. Property is in the Business District. Case #30a-2020.

**5. 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 variances granted on 8-26-2020. Property is in the Business District. Case #30b-2020.**

Attorney Derek Durbin, representing the applicant, explained that the request for extension is related to the applicant's difficulty starting construction as they were disproportionately impacted by labor and material challenges after Covid. He explained that nothing material has changed in terms of zoning ordinances or relief being sought.

Chair Driscoll noted that this application has been extended one time already and asked what steps have been taken to move the project forward.

**Michael Labrie** of 50 Old Beach Road, owner of the property, explained that they've continued with their construction documents, layout, and specific detailed layouts for the property. They've built curriculum for teaching lessons that will occur on the farm, employed the master gardener who's started designing the plants and structure of the 50x100' garden plot, and they are in the first phase of the garden's expansion. He explained the supply chain issues they've been facing as a result of Covid and the difficulties obtaining building materials, HVAC, specialty equipment, labor, and staffing. He explained that getting design professionals has made it difficult to deliver what's needed to obtain a building permit and start construction. He also noted that they need to have substantial construction, and there is gray area as to what that threshold is. They've been told they must have windows installed by the time of expiration, which is a significant amount of work. He explained they intend to start construction shortly, but they don't think they can get to that phase by October.

Chair Driscoll asked Mr. Labrie if he has contractors selected and ready to start.

Mr. Labrie confirmed and explained that they're working with the same designer who's built three properties them. The designer has had difficulty providing deliverables due to his own staffing issues, but they intend to get the project started and completed over the next couple of months.

Chair Driscoll asked Mr. Labrie if he has a scheduled start date for construction

Mr. Labrie explained they're looking at a September/October start.

Member Tuttle echoed Chair Driscoll's concerns and noted that Mr. Labrie is working on a property in Portsmouth at the same time.

Mr. Labrie explained that these are two separate projects and he was more impacted by difficulties in finishing Jimmys during Covid.

Member Mikolaities explained he has no concerns and it seems like a good project. He explained that he sat on the board for the initial application and there was no opposition. He added that he understands the supply chain issues and interest rates and has no problem extending it one more time.

Member Piela agreed and explained that it seems to be a reasonable justification for extension.

Member Chororos agreed with an additional extension, but noted it should be limited to just once more.

Mr. Labrie explained this is first project he's requested to extend in his whole career.

Chair Driscoll opened to the public at 7:17 PM.

**Chris McKenna** of 9 Elizabeth Lane expressed his support of the extension and the Labrie family.

Hearing no further comments, the public session was closed.

Member Tuttle referenced another application that was approved with the condition that it couldn't be extended further.

Chair Driscoll explained that he doesn't want to put other constraints on the project if they don't have to.

Chair Driscoll, speaking to Planning/Zoning Administrator Reed, asked if the board needs to do anything special for an extension other than seeing that it has good cause.

Planning/Zoning Administrator Reed explained that good cause is the only reason the board would need to vote for.

**Motion by Chris Piela to approve the one-year extension to the relief granted by special exception issued on 8/26/2020 as the after-effects of Covid on the restaurant industry are real, the labor market and supply-chain issues are extenuating circumstances, there is support from abutters, and there is no opposition. Seconded by John Tuttle.**

**Vote 5-0-0** (G. Mikolaities, C. Piela, P. Driscoll, J. Tuttle, S. Chororos in favor)

**Motion by Chris Piela to grant a one-year extension to the relief for variances granted on 8-26-2020 for the same reasons; the effects of Covid on the restaurant industry, the labor market, and supply chain issues, which are extenuating circumstances. Seconded by John Tuttle.**

**Vote 5-0-0** (G. Mikolaities, C. Piela, P. Driscoll, J. Tuttle, S. Chororos in favor)

**6. Keith Bridge for property owned and located at 175 Central Road, Tax Map 12, Lot 21 requests variances from §190-2-3.C(2) for a house 18'-6" from the side boundary where 20' is required; from §190-2.3.C(3) for a house 34' from the front boundary where 40' is required; from §190-2.3.C(5) for building coverage 17% where 15% is allowed; and 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.**

**Keith Bridge**, 165 Central Road, explained that the original ranch is 39' and the plan is to add a 10' breezeway with a 12' garage. There would also be a 24x45' addition off the back. He's looking to raise the building on the nonconforming lot on the southwest side of the house. Regarding the variance in the front, Mr. Bridge explained he's not moving the building closer to the road, it's the same distance as the garage, shortening the building three feet from what it is on the northwest side. Currently it's 2' over the boundary, but after the project it would be 1' short. He explained there are no setback issues on the back of the building. He explained he just received the site plan today and that impervious coverage has increased to 18.9% with the driveway, lot size is 460 square feet short of what map shows, and he's asking for 18.9% impervious lot coverage. The existing building coverage is 15,043 square feet, 7.4% and the proposed is 8.9%. Existing impervious coverage is 15.1% and proposed is 18.9%.

Planning/Zoning Administrator Reed asked if Chair Driscoll could review the site plan. Mr. Bridge agreed.

Mr. Bridge explained that he will shorten overhangs on the existing ranch.

Chair Driscoll asked if there are any real soffits on the gable ends, noting that the plan says there's an existing overhang.

Mr. Bridge explained that the foundation measures 39' and it's actually a 3" overhang.

Chair Driscoll asked if all measurements were taken from the dripedge of the roof, not the side of the house.

Mr. Bridge confirmed.

Chair Driscoll clarified that the intent is to raise, or lift, the building.

Mr. Bridge confirmed and explained that the purpose is to make one floor living area and have some basement space.

Member Mikolaities noted that the existing building is 29' wide and the proposed says 24'.

Mr. Bridge clarified that it's 24' wide but 29' to the garage.

Chair Driscoll noted that the applicant is asking for 18 and 6" so he would have a couple of inches to play with.

Member Chororos asked if the back of the lot ends where where the tree comes across. Mr. Bridge confirmed.

Member Tuttle noted that the height will be about 26' and asked if the applicant is requesting a height variance. It was confirmed that he is not.

Chair Driscoll commented that the project seems straightforward. He asked if whomever has done plans has done structural analysis to be sure that it's buildable. Mr. Bridge confirmed and also confirmed that they want to raise everything onto the new cement block foundation.

Chair Driscoll asked Mr. Bridge if Planning/Zoning Administrator Reed could keep his site plans as a part of the record. Mr. Bridge agreed.

Chair Driscoll opened to the public at 7:34 PM.

In response to Chair Driscoll's question, Mr. Bridge explained that there's been no opposition from abutters.

The public session was closed at 7:34 PM.

Member Tuttle explained that it seems reasonable, it's not over-burdening the property boundaries, the existing coverage of 15.1% is going up a small percentage for the driveway, but all looks good.

Member Chororos agreed and explained that it's an improvement to the exterior, is only a small increase in footprint, the density remains conforming, and moving from 15% to 18% seems fair and fairly minimal request.

Member Mikolaities agreed that it's a reasonable request, and the applicant would remove nonconformity on the north side.

Member Piela agreed, and discussed lot coverage, noting that the lot is on a hill, is in a dry part of town, and he's not concerned for this lot's drainage because of its location.

Chair Driscoll commented that he tends to worry about stormwater management with any changes to a nonconforming building, but this is set back from the road and grading to the road doesn't seem to be an issue, and the back yard is open and will absorb moisture. He also noted that the applicant is also an abutter, so he wanted to look out for future owners, but he doesn't see any issues or a need for any conditions.

**Motion by Chris Piela to approve the application by Keith Bridge for property owned and located at 175 Central Road, Tax Map 12, Lot 21 for variances from §190-2-3.C(2) for a house 18'-6" from the side boundary where 20' is required; from §190-2.3.C(3) for a house 34' from the front boundary where 40' is required; from §190-2.3.C(5) for building coverage 18.9% where 15% is allowed; and from §190-6.3.A to raise the existing 39' ranch 12" to obtain 7'6" height in basement on a nonconforming lot because this is a reasonable project, it reduces nonconformity on the north side, it will improve the property visually and make it more livable, and it will increase the value of the surrounding properties; this lot is nonconforming, which creates special conditions of the property itself.**

**Seconded by John Tuttle.**

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

Gregg Mikolaities – Yes, because the existing nonconformity in the front and south already exists and removing the existing nonconformity in the north will make it conform.

Chris Piela – Yes, because nonconformity will be reduced, and for reasons previously stated.

John Tuttle – Yes, for reasons previously stated.

Sandra Chororos – Yes, as it doesn't hinder any view, lighting, shadow, etc. for the neighbors and does not threaten public health, safety, or welfare.

Patrick Driscoll – Yes, for reasons previously stated.

**2. The spirit of the ordinance is observed:**

Gregg Mikolaities – Yes, for reasons previously stated.

Chris Piela – Yes, for reasons previously stated.

John Tuttle – Yes, for reasons previously stated.

Sandra Chororos – Yes, for reasons previously stated.

Patrick Driscoll – Yes, for reasons previously stated.

**3. Substantial justice is done:**

Gregg Mikolaities – Yes, for reasons previously stated.

Chris Piela – Yes, for reasons previously stated.

John Tuttle – Yes, for reasons previously stated.

Sandra Chororos – Yes, for reasons previously stated.

Patrick Driscoll – Yes, for reasons previously stated.

**4. The values of surrounding properties are not diminished:**

Gregg Mikolaities – Yes, for reasons previously stated.

Chris Piela – Yes, for reasons previously stated.

John Tuttle – Yes, for reasons previously stated.

Sandra Chororos – Yes, for reasons previously stated.

Patrick Driscoll – Yes, for reasons previously stated.

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

Gregg Mikolaities – Yes, for reasons previously stated.

Chris Piela – Yes, for reasons previously stated.

John Tuttle – Yes, for reasons previously stated.

Sandra Chororos – Yes, for reasons previously stated.

Patrick Driscoll – Yes, for reasons previously stated.

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



Gregg Mikolaities – Yes, for reasons previously stated.

Chris Piela – Yes, for reasons previously stated.

John Tuttle – Yes, for reasons previously stated.

Sandra Chororos – Yes, for reasons previously stated.

Patrick Driscoll – Yes, for reasons previously stated.

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

Gregg Mikolaities – Yes, for reasons previously stated.

Chris Piela – Yes, for reasons previously stated.

John Tuttle – Yes, for reasons previously stated.

Sandra Chororos – Yes, for reasons previously stated.

Patrick Driscoll – Yes, for reasons previously stated.

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

Gregg Mikolaities – Yes, for reasons previously stated.

Chris Piela – Yes, for reasons previously stated.

John Tuttle – Yes, for reasons previously stated.

Sandra Chororos – Yes, for reasons previously stated.

Patrick Driscoll – Yes, for reasons previously stated.

**Vote 5-0-0** (G. Mikolaities, C. Piela, P. Driscoll, J. Tuttle, S. Chororos in favor)

**7. Enos General Contracting for property located at 715-717 Washington Road, Tax Map11, Lot 56 requests variances from 190-2.3.C(2) for a garage 4.3' from the side boundary where 20' is required and from 190-5.0.C for a driveway 2' +/- from the side boundary. Property is in the Single Residence District. Case #36-2023.**

**Eric Eno** of Enos General Contracting explained that he's doing a renovation on Washington Road. Initially it was a home renovation, but it was then discovered that the existing garage is 4.4' over the neighbor's boundary line. The home owners had asked if they could move it back

and build a new garage within the property line to avoid encroachment. Mr. Eno referred to the plans that show the existing garage 4.4' over the line and the placement of the new garage roughly 5' set back from the property. He explained that they can't go much farther because of the drainage between the two buildings. It's a detached garage now and they're hoping to keep it close to where it is currently, near the existing driveway.

Member Piela asked if the proposed driveway is existing.

Mr. Eno explained that the proposed driveway is existing.

Member Chororos asked for clarification that the distance is 27', commenting that it could be moved a little closer.

Mr. Eno explained from corner to corner it's 27'. He explained that there's a big swale that comes down from house. He explained that if they were to bring it over another 15', you would have to drive up along side of house and it's pretty tight. He added that there's a need for room to work with machinery to put the septic out back and drainage in the driveway.

Member Chororos asked if the rounded driveway will stay up front and if it's modified at all.

Mr. Eno explained that they haven't talked about it, but it will be pretty much the same as it is with some cleaning of the pavement.

Member Chororos asked Mr. Eno if the driveway will have two stalls to pull front in. Mr. Eno confirmed that two cars would pull straight in.

Chair Driscoll asked Mr. Eno for a picture of the proposed garage.

Mr. Eno explained that he doesn't have anything in addition to the submitted plan as it's a garage company building it, and he's going to prepare the foundation. He explained he'll have a specific plan when they get ready for the garage.

Chair Driscoll explained the board wants to be able to approve it so Mr. Eno can put in a two-story garage. He explained that the board only has a floor plan with a proposed size of 24'x35'.

Mr. Eno explained the garage will only be a single story and they don't have an exact drawing of the garage.

Chair Driscoll asked Mr. Eno for some detail about the garage.

Mr. Eno explained that the gable ends are going to be on the right and left sides with soffits. There are garage doors on the front, a person door on the front and on the back for equipment. He offered to pull up an image of a similar structure.

Chair Driscoll agreed that an image would be good for the board to see and asked that he also print out a picture to submit to Planning/Zoning Administrator Reed for the file.

Mr. Eno agreed and also explained that if the board were to limit him to a single story, he would agree not to build anything bigger.

Chair Driscoll expressed his concern that if a single story was built as a 14' garage door with something above, and the building inspector were to say it wasn't approved by the ZBA, there's nothing that prevents it from becoming a massive structure. He asked if Mr. Eno could pull up a picture so the board could get an idea of the ridge height. He commented that everything else seems to make sense, but without a picture he might need to continue the application to another meeting.

Chair Driscoll opened to the public at 7:51 PM; hearing no comments, the public session was closed.

Members Tuttle and Chororos agreed that they're tentatively ok with the plan as long it's not going to morph into something bigger. Member Tuttle commented that it's good to resolve property line disputes if the board has the ability to assist.

Mr. Eno assured the board that it's not going to morph into something bigger, and offered to show the board a picture.

Member Mikolaities noted that the application says 15' high, one story.

Mr. Eno explained they had discussed 15' high.

Chair Driscoll commented that 15' is pretty low.

Member Mikolaities pointed out that the application says 800 square feet and the plan says 840 square feet.

Chair Driscoll reopened to the public at 7:54 PM

Mr. Eno presented a picture of a garage similar to the proposed. He agreed to email it to Planning/Zoning Administrator Reed.

Member Piela asked if it's 15' or less.

Mr. Eno explained it's 15' to the peak and a basic two-car garage. He explained that initially the applicant wasn't planning to do a garage, it was going to be a simple renovation.

Chair Driscoll asked Mr. Eno if he could pick a number that he's comfortable with, say 18'.

Mr. Eno agreed to 18': 9' for the door and another 9' to the peak.

Member Chororos asked for clarification, noting that 24'x34' is reflected on the response but 24'x35' is reflected on the site plan.

Mr. Eno and Planning/Zoning Administrator Reed clarified that it's 24'x35' with 18.9' for the door and no more than 19'.

Chair Driscoll reclosed to the public at 7:58 PM.

Member Mikolaities explained that he has a tough time with this application as it's a 52-acre site. He explained that now's the time to make things right, the two-car garage should be one car, and he doesn't support this at all.

Member Piela explained that Member Mikolaities brought up a good point. He explained that originally he liked the idea of correcting the lot line, but this is a significantly sized lot and Berry's Brook is close by. He noted that they could pivot this 90 degrees and put it behind the building. He commented that it's a huge structure with a big attached barn and a garage in back with significant storage. However, it's existing and there is a neighbor dispute, he wondered if the board should be granting variances for lot line disputes.

Member Chororos explained her reasons for asked about the 27' explaining that it looked like more. She explained that there seems to be some room to move it closer and become more conforming to the property and moved off of the lot line.

Mr. Eno explained that it was a 28' garage that was shrunk down and moved over. He added there's a little garage that slopes into the house in the way and drainage was an issue. He explained they needed the drainage to go between the house and garage, otherwise it would flow towards neighbor's lot.

Member Tuttle commented that the location was overburdening property line and it's also resolving a neighbor dispute, but Member Piela brings up good point: is the board here to resolve

neighbor disputes? He asked if the topography was preventing him from sliding the garage closer.

Mr. Eno confirmed and explained it dumps down the road into the backyard and turns off toward house and the garage slopes into the house just before the stonewall. He explained there's a big septic system with drainage line and they had to squeeze the drainage in and keep the garage toward the house.

Chair Driscoll commented that what's currently there is overstated as a garage. He explained he's relying on the criteria that the board votes on and he doesn't think that #1 prohibits him from voting in favor of the application. He commented that he likes the fact that it's becoming more conforming and if he can take the building that's straddling the lot line and move it to one side, he would be in favor of the applicant. He added that there's substantial justice and it improves the value of surrounding properties and that unnecessary hardship reiterates those points. He expressed that the benefits outweigh negatives and he would prefer to see the proposed garage there from a public/neighbor perspective than a building that straddles the lot line. He commented that this is an improvement for both lots and for the town in general.

Member Mikolaities commented that he agrees to disagree.

Chair Driscoll explained that the board should put the conditions on approval based on clarity so the board knows what they're voting for, have a motion with the requirements and vote on it after that, unless more deliberation is needed.

Member Mikolaities asked Mr. Eno if he agrees to a height of 19' and asked if any utilities are going to the garage other than electrical.

Chair Driscoll opened to the public at 8:08 PM.

Mr. Eno explained that only electrical would be used in the garage. It's a two-car-only garage with a lean-to out back. There is no plumbing but they're running an empty conduit for future electric car charging, but they're only doing electrical, foundation, two-car garage, with no HVAC or heat.

Member Chororos asked if Mr. Eno agrees to 24'x35' and no more than 19' in height? Mr. Eno confirmed.

Chair Driscoll asked if the garage would match the image Mr. Eno showed the board. Mr. Eno confirmed.

Member Piela asked for clarification regarding the lean to.

Mr. Eno explained there is another 10' on the back for lawn mower storage and a 5' person door.

Member Piela asked if that's all included in the 24'x35' space. Mr. Eno confirmed.

Mr. Eno explained that he met with the abutter, who has concerns about not being able to see the field in back, which is how the heights were determined. He explained that they discussed the placement of the garage and he was happy with it.

Member Tuttle asked Mr. Eno if he'd discussed a height of 15' with the neighbor, noting that the board had been discussing a 19' height.

Mr. Eno responded no, explaining that the existing garage is around 18' and they used that garage to make sure the new one wouldn't block his view. He explained that the abutter, Mike, was okay with the plan.

Planning/Zoning Administrator Reed commented that the abutters were properly noticed so, if he had an issue, he would be present or would have submitted something in writing.

Chair Driscoll expressed his concern that he doesn't know if the existing shed has the same ridge height as the presented picture.

Mr. Eno offered to get an exact drawing of the garage.

Member Piela suggested the applicant request a continuance and explained continuance procedures.

The board discussed the existing and proposed garage heights.

Chair Driscoll suggested the board weigh in on whether a definitive height and testimony from the abutter would make a difference in their vote.

Member Piela explained that a letter from the abutter would make a difference but they were legally noticed, so he assumes that their silence is approval. He explained that he finds the application deficient in not having a plan for the height of what they want to build. He added that he would like to see a topo map of the property with definitive proof points of why the structure has to be in this location. He also commented that Member Mikolaities' point about the two-car garage and its location is compelling.

Member Tuttle explained that he agrees with Member Piela, a topo map would be helpful as well as more information regarding what exactly is proposed.

Member Chororos commented that the applicant has a valid point regarding stormwater management. She expressed concern about where it comes up against the drive and wondered if the drive were fully paved, would water flow shift to the neighbor's property. She wondered if the board saw the swale, would it help them make that determination. She commented that the inside of the barn looks a little low, and it seems like a lot of work to make the barn a garage. She explained she needs more information to make her decision.

Mr. Eno explained that he didn't come with an actual plan because he wanted to see if he could actually do this before he went through all the work to get the plans, topo map, etc.

Member Piela explained that he thinks Mr. Eno can do it, but the board needs more information.

Chair Driscoll explained that more information would give the applicant a better chance of approval.

**Motion by Chris Piela to continue the application by Enos General Contracting for property located at 715-717 Washington Road to the September 6, 2023 meeting. Seconded by John Tuttle.**

**Vote 5-0-0** (G. Mikolaities, C. Piela, P. Driscoll, J. Tuttle, S. Chororos in favor)

**8. Porter Family Trust for property owned and located 5 Parkridge Ave, Tax Map 17.3, Lot 18 requests equitable waiver from §190-3.4.D for height where 28.4' was built and 28' is allowed. Property is in the General Residence District and Coastal Overlay Districts. Case #37a-2023.**

**Monica Kieser** of Hoefle, Phoenix, Gormley & Roberts, representing the applicants, introduced the applicants, **James and Jessica Porter** as well as **Josh and Seamus** from Bridgeside Building Company.

Attorney Kieser summarized the reasons for a waiver request, noting that this application was before the board last year for an addition on top, a 43' mudroom on the first floor, and a change of impervious surfaces to pervious. She explained that the applicant previously walked away with variances for expansion, dwelling coverage, and setback-related relief, but they hadn't requested height relief as they intended a 28' compliant home. Referring to exhibit A, she explained that once construction was underway there was a miscommunication between the architect and builders. During the build it was discovered that the top plates of the wall section were old and not straight; an additional 1.5" top plate was added during framing and the joint

size was increased to add an additional 2 ¾" to the height of the structure. The applicants were aware of the top plates but didn't think about the height difference, and they did not know about the change in joints. Attorney Kieser explained that no abutters have reached out to Planning/Zoning Administrator Reed and the applicants have spoken to three abutters, none of whom have concerns.

Member Mikolaities, looking at the submitted plans and elevations, wondered how the builders missed it by 3'.

Attorney Kieser explained that the height calculation may be taken from existing grade. She explained that the ridge height on the left side of the plan goes all the way to the basement and you can see the measurement on the right side of the plan.

Chair Driscoll pointed out elevations in Exhibit A1, noting that the math checks out.

Attorney Kieser explained that in the previous minutes, she described it as exactly 28'.

Chair Driscoll confirmed that it's in the minutes and on the approval.

Attorney Kieser reviewed the criteria for an equitable waiver.

Attorney Kieser explained that there's an intention to place solar panels on the roof. Given the pitch and ridge height, solar panels would be placed on the sides, 12" down from the ridgeline.

Member Piela referring to the Exhibit 7 memorandum, explained that paragraph 2 discusses architect's 6" of wiggle room. Looking at the grade and ridge height, he wondered where the 6" came from.

Attorney Kieser explained that it was a verbal discussion between the architect and builder.

**Josh Perry** confirmed that it was a verbal conversation between the lead architect and himself. He explained that decisions were made in the field based on the plans. He explained that he didn't know they were up against the wall on a number.

The board discussed the mistake made by the technical team with Attorney Kieser.

Mr. Porter explained that their neighbor, Paul Cantin, didn't come tonight to deny the project, but approved it verbally and wished them luck.



Chair Driscoll explained that the board would use the application for an equitable waiver, a Rye document, as criteria.

Attorney Kieser explained that should the board grant the waiver her intention would be to withdraw the request for a variance after the appeal period on the equitable waiver.

Chair Driscoll opened to the public at 8:45 PM.

**Sean Maxwell** of 24 Park Ridge Ave. expressed his support of the project and explained that the height won't impact the neighborhood.

**Carrie Webb Olson** asked if 3.5" is noticeable to the naked eye and asked for clarification as to why the height of the building is in dispute.

Chair Driscoll explained why the building's height is in dispute.

Chair Driscoll closed the public session at 8:47 PM.

Member Chororos expressed that this is not a violation out of ignorance or bad faith, it was something that occurred during construction due to substitution of the joints. She explained that the cost for correction far outweighs the limited height difference which is less than 5". She added that it's not a public nuisance and conforms to the look of the other homes in the neighborhood. She summarized that it was a mistake and she's ok with it.

Member Tuttle agreed with Member Chororos and discussed the fourth criteria: it doesn't interfere with the use of others, there's nobody here to speak against it, and the cost of correction far outweighs the public benefit to be gained.

Member Piela stated that he doesn't disagree, but explained that he wouldn't want this to become a routine occurrence. He noted that this could have been solved with a question, but that he would have granted the variance were it requested, so he's in favor of granting the waiver.

Member Mikolaities explained that he also believes and understands the circumstances and there is no benefit to removing 4".

Chair Driscoll agreed and explained that the building community is starting to understand as-built a bit more; he noted that he wouldn't recommend people use this as an avenue to add 4" to the height of their building. If a neighbor took issue, he would have a very different take and the applicant would be opening themselves up to a costly remedy. He explained that in looking at the criteria for an equitable waiver, it seems to satisfy.

**1. The request involves a dimensional requirement.**

Patrick Driscoll – Yes, clearly it involves dimensional requirements, you can see them on the plans.

Gregg Mikolaities – Yes, as stated.

Chris Piela – Yes, as stated.

John Tuttle – Yes, as stated.

Sandra Chororos – Yes, as stated.

**2. The nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation has been transferred to a bona fide purchaser and the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake.**

Gregg Mikolaities – Yes, I believe and understand the circumstances outlined in the application and presented

Chris Piela – Yes, as stated.

John Tuttle – Yes, as stated.

Sandra Chororos – Yes, as stated.

Patrick Driscoll - Yes, as presented, working with bottom plates and structure on a building there's always adaptations, this seems to be in good faith.

**3. The nonconformity does not constitute a nuisance nor diminish the value or interfere with the uses of other properties in the area.**

Gregg Mikolaities – Yes, we heard testimony from one of the neighbors that they didn't have a problem and we didn't hear anyone speak against it.

Chris Piela – Yes, as stated.

John Tuttle – Yes, as stated.

Sandra Chororos – Yes, as stated.

Patrick Driscoll - Yes, as stated.

**4. The cost of correction far outweighs any public benefit to be gained.**

Gregg Mikolaities – Yes, I don't see any benefit to cutting off 4" and create something that's less aesthetically pleasing.

Chris Piela – Yes, as stated.

John Tuttle – Yes, the correction cost is going to far outweigh going to get a CO permit.

Sandra Chororos – Yes, as stated.

Patrick Driscoll - Yes, the neighbor most affected is going to be more inclined to look at a traditional ridge than something that's flattened at the top.

**Motion by John Tuttle to approve the request for an equitable waiver for the Porter Family Trust for property owned and located 5 Parkridge Ave, Tax Map 17.3, Lot 18 as presented. Seconded by Chris Piela.**

**Vote 5-0-0** (G. Mikolaities, C. Piela, P. Driscoll, J. Tuttle, S. Chororos in favor)

Attorney Kieser requested to continue application item 9 to the next month's meeting and she would then write a letter on September 3, 2023 withdrawing that application, assuming that noone has appealed the decision made tonight.

**Motion by Chris Piela to continue the application by Porter Family Trust for property owned and located 5 Parkridge Ave. to the September 6, 2023 meeting. Seconded by John Tuttle.**

**Vote 5-0-0** (G. Mikolaities, C. Piela, P. Driscoll, J. Tuttle, S. Chororos in favor)

**9. Porter Family Trust for property owned and located 5 Parkridge Ave, Tax Map 17.3, Lot 18 requests a variance from §190-3.4.D for height where 28.4' exists, 28.4' is proposed and 28' is allowed. Property is in the General Residence District and Coastal Overlay Districts. Case #37b-2023.**

*Application continued to the September 6, 2023 meeting (see motion above).*

**10. Carrie Webb Olson for property located at 44 Pioneer Road, Tax Map 24, Lot 100 requests a variance from §190-3.1.H(2) to remove a wood deck replace with patio and remove shed and relocate shed within 75' wetland buffer. Property is in the Single Residence District and Coastal Overlay District. Case #38-2023.**

Carrie Webb Olson presented her application to the board, explaining that she bought the house in 2019, has done multiple surveys, and has materials but needs three modifications in the back yard. She explained those modifications include the replacement of a wooden deck with permeable stone, an 800 square foot patio, and the relocation of a shed. She explained that the shed is currently entirely within the wetland buffer and the proposed new location is only partially in the wetland buffer. She also requested to install two propane tanks on the side of garage.

Chair Driscoll explained that the board will vote on five criteria and invited the applicant to review any additional information.

Ms. Olson explained that the application is pretty straight forward and it's all written in her submitted memo.

Member Tuttle asked Ms. Olson if she would be adding a hot tub.

Ms. Olson responded that she would like to some day.

Member Tuttle asked Ms. Olson if she's seeking relief for the hot tub.

Ms. Olson explained that she doesn't think it's necessary, commenting that, for the purpose of the application, if it were delayed for the hot tub then she would omit it from the plan.

Chair Driscoll, speaking to the town's building inspector, **Chuck Marsden**, asked if an additional variance would be necessary if it's on the plan and is installed within the next two years.

Mr. Marsden explained that if its location is based on the wetland buffer, then he's fine with that.

Chair Driscoll asked Ms. Olson if she has propane tanks that she's relocating.

Ms. Olson explained that she has one deteriorating propane tank.

Planning/Zoning Administrator Reed commented that propane tanks don't require a variance.

Member Piela asked Ms. Olson if she's seen the letter from the RCC and whether she has any issues with their stated conditions.

Ms. Olson explained that she's not aware that the RCC has jurisdiction to put conditions on the property, but she did read the letter and has no problem with their requests. She explained that this project has cost her thousands of dollars and she will agree to remove invasive plants to move the shed, but wondered if there is something specific in this letter that the board would like to draw her attention to. She explained that the RCC has walked the property and spoken with her twice and twice written letters stating that they have no issue with the proposed project. Chair Driscoll, referring to the RCC's letter, commented that he doesn't see how the shed relocation has any affect over the adirondak sitting area.

Ms. Olson explained that members of the RCC commended her during their site walk for maintaining the property in accordance with their wishes and that she has no problem with meeting their requests.

Chair Driscoll, discussing the propane tanks, expressed his concerns regarding watershed and drainage. He explained that it doesn't seem to be a risk to the wetlands other than where propane tanks are and recommend that, in digging out that area, being careful to avoid any sediment runoff.

Ms. Olson stated that she'll certainly address that concern.

**Dana Truslow** of the Rye Conservation Commission explained that she was present for the second of two site walks and Ms. Olson maintained the original sitting area as requested previously. She explained that it was addressed in the letter as properties often become developed even though they're in the buffer, and she was pleased to see nothing was happening. In terms of removing invasive species, she noted that there are many plants that would be helpful to remove. She explained that in order to move the shed, the applicant would have to remove some of it and it seemed like the applicant would be interested in removing most of it in that area.

Member Chororos asked the applicant what is in her shed.

Ms. Olson explained that, aside from mice, her shed is storage for lawn furniture and miscellaneous items.

Chair Driscoll opened to the public at 8:00 PM

Direct abutter, **Chris McKenna**, of 9 Elizabeth Lane asked to see the proposed plan. Upon reviewing the plans he stated that he has no problem with the project so long as they keep it private and maintained.

The public session was closed at 9:08 PM.

Chair Driscoll invited the board to discuss the first and second recommendation in the RCC letter.

Member Piela commented that the first recommendation is a good general recommendation but doesn't have any bearing on this project. He expressed that it's up to the applicant and wouldn't want include it in the criteria.

Member Chororos agreed that it doesn't pertain to this application; it would be nice to do, but not required.

**Motion by Sandra Chororos to approve the application by Carrie Webb Olson for property located at 44 Pioneer Road, Tax Map 24, Lot 100 for a variance from §190-3.1.H(2) to remove a wood deck replace with patio and remove shed and relocate shed within 75' wetland buffer because the applicant is removing wood-composit decking and replacing with permeable pavers, is moving the shed further from the resource, is making the shed and patio more conforming, and the value of the surrounding properties is not diminished.**

**The above referenced variance was granted with the following condition from the July 12, 2020 Rye Conservation Commission letter:**

- **The owner should remove the invasive plants in the area where the shed is to be relocated.**

**Seconded by John Tuttle.**

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

Sandra Chororos – Yes, as stated.

John Tuttle – Yes, as stated.

Chris Piela – Yes, as stated.

Gregg Mikolaities – Yes, as stated.

Patrick Driscoll – Yes, as stated.

**2. The spirit of the ordinance is observed:**

Sandra Chororos – Yes, as stated.

John Tuttle – Yes, as stated.

Chris Piela – Yes, as stated.

Gregg Mikolaities – Yes, as stated.

Patrick Driscoll – Yes, as stated.

**3. Substantial justice is done:**

Sandra Chororos – Yes, as stated.

John Tuttle – Yes, as stated.

Chris Piela – Yes, as stated.

Gregg Mikolaities – Yes, as stated.

Patrick Driscoll – Yes, as stated.

**4. The values of surrounding properties are not diminished:**

Sandra Chororos – Yes, as stated.

John Tuttle – Yes, as stated.

Chris Piela – Yes, as stated.

Gregg Mikolaities – Yes, as stated.

Patrick Driscoll – Yes, as stated.

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

Sandra Chororos – Yes, as stated.

John Tuttle – Yes, as stated.

Chris Piela – Yes, as stated.

Gregg Mikolaities – Yes, as stated.

Patrick Driscoll – Yes, as stated.

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

Sandra Chororos – Yes, as stated.

John Tuttle – Yes, as stated.

Chris Piela – Yes, as stated.

Gregg Mikolaities – Yes, as stated.

Patrick Driscoll – Yes, as stated.

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

Sandra Chororos – Yes, as stated.

John Tuttle – Yes, as stated.

Chris Piela – Yes, as stated.

Gregg Mikolaities – Yes, as stated.

Patrick Driscoll – Yes, as stated.

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

Sandra Chororos – Yes, as stated.

John Tuttle – Yes, as stated.

Chris Piela – Yes, as stated.

Gregg Mikolaities – Yes, as stated.

Patrick Driscoll – Yes, as stated.

**Vote 5-0-0** (S. Chororos, J. Tuttle, C. Piela, G. Mikolaities, P. Driscoll in favor)

**11. Sean & Danielle Maxwell for property owned and located at 24 Parkridge Ave, Tax Map 19.4, Lot 11 request variances from §190-6.3.A for expansion of a nonconforming structure on a nonconforming lot; from §190-2.4.C(1) for expansion of a house vertically 5'6" and 59.8'; for a new entry roof over existing stairs 16.4'; and a pervious patio 3' and 44.8' from the rear boundary where 30' is required; from §190-2.4.C(2) for expansion of a house vertically 17.1'; addition of impervious pavers 11.5'; a patio 17.5' from the side boundary where 20' is required; from §190-2.4.C(3) for expansion of house vertically 15.3'; replacement of existing impervious pavers with pervious pavers 3.2'; new entry roof over stairs 11.9' from the front boundary where 30' is required or the average depth of front yards on the lots next thereto on either side; and from §190-2.4.C(7)/3.4.D for height 33.1' where 28' is allowed. Property is in the General Residence, Coastal Overlay District. Case #39-2023.**

Sean Maxwell, the applicant, explained that he made a few adendums to the application and distributed copies of the plans to the board. He explained that all changes can be seen on the first



page of the site plan, which now includes the minisplit condenser, an expansion of the stairways, and other small changes. He noted that it is still below 30% impervious coverage.

Mr. Maxwell reviewed the home's existing conditions, explaining that the house is a 1.5 story building. He's lived there for 14 years, has a growing family, and needs more storage. He explained that the proposed patio and walkways are all pervious surfaces. He explained that the structure is solid but the roof peak and exterior is outdated and needs improvement.

Mr. Maxwell provided the board with photos of the grounds, explaining that he's an environmental consultant and understands the general environmental concerns. He discussed a stormwater management plan regarding runoff from the property and roadway. He explained that the property is in the upper coastal overlay district, but is not blocking any views as they are far away from other dwellings. Mr. Maxwell referred to Sheet A in the package, discussing their careful consideration of roof pitch, snow load, and the deck in requesting height expansion.

Mr. Maxwell explained that the proposed project would include additional storage, a half bath, reconfigured rooms, an office for two, a pervious patio and walkways, and finished the building will have a coastal-farmhouse design and will blend in with other houses in the neighborhood. He explained that he's looking for expansion on a nonconforming lot, rear and side boundary relief, pervious pavers, and a variance for a minisplit condenser on the south side as well as front boundary and height relief.

Mr. Maxwell discussed hardship, explaining that their current storage is a small crawlspace. He described a neck injury which prevents him from using the crawlspace easily. He also noted that he and his wife work from home and need offices, but are restricted by the space. He explained that they currently have 216 square feet of living space per person and he's asking for 384 square feet. He noted that the expansion would be in same footprint and that it's a modest request for relief considering the hardships described. He also explained that the proposal is similar to the next door neighbor's home configuration.

Member Chororos, referring to the picture, asked about the neighbor's home.

Mr. Maxwell explained that photo 9 has an aerial view and pointed to the neighbor's property and his property.

Member Piela asked Mr. Maxwell if he knows the height of the neighbor's house. Mr. Maxwell did not know.

Member Chororos asked Mr. Maxwell if his other neighbor has a second story, which he confirmed.

Chair Driscoll asked Mr. Maxwell if the house to the right is comparable to the height of his home.

Mr. Maxwell explained that the neighbor's home is higher considering the steeple and it has a second story. He explained that if he's not able to receive relief, then he'd need to move elsewhere, likely out of Rye. He explained that he has three letters of support from neighbors and distributed copies of those letters to the board. He explained that all neighbors are in agreement with the project.

Chair Driscoll stated that the board would read three letters submitted by Bettina Caminati of 28 Parkridge Ave., **Joann Price** of 19 Parkridge Ave., who was present at the meeting, and Wendy and Jim Ready of 18 Parkridge Ave.

Chair Driscoll described a great submission by an abutter who was in support of the family and project. He asked Mr. Maxwell if he has anything to review the overlay of the plan view of the two homes.

Mr. Maxwell explained that the architect took the plan and digitized it into CAD. He clarified the plan with Chair Driscoll.

Chair Driscoll asked how far away the Coastal Overlay District ends.

Mr. Maxwell explained that he's not exactly sure, but it's in the next lot; there's nothing but woods and conservation land in that area.

Chair Driscoll noted that the revised plan includes parking easements. He asked Mr. Maxwell to speak to the lot line adjustment.

Mr. Maxwell explained that the adjustment happened before his time, he's not proposing it as a part of this project, just using the adjustment to show the plans from a previous effort. He clarified that he's not adjusting anything.

Planning/Zoning Administrator Reed confirmed that, explaining that she remembers when the Camanatis came before the Zoning and Planning Boards.

Chair Driscoll asked Mr. Maxwell if he would provide a stormwater management plan to the building department.

Mr. Maxwell agreed and explained that they're increasing the pervious area and it shouldn't be a problem. He noted that drainage mostly stays on site and he's amended the garden beds to take runoff from roof.

Chair Driscoll opened to the public at 9:44 PM.

**Joann Price** of 19 Parkridge Ave. stated that she's in favor of the project, she has seen all the plans, and she doesn't know what the property height is at 18 Parkridge Ave., but it's very high as well.

**Paul Nakrosis** of 471 Wallis Road expressed his support of the project, explaining that it would improve the neighborhood and the heights in the area are comparable to what's proposed.

Chair Driscoll closed to the public at 9:44 PM.

Member Chororos explained that while the height is five feet over, considering the number of hardships, it's a reasonable request and the board has heard from neighbors that there are other homes in the neighborhood that have had similar vertical expansion. She noted that the granted relief would allow them to stay, they are clearly beloved in the neighborhood, and it would improve the character of the neighborhood, and they're staying within the footprint of the home. She explained that she's okay with the project.

Member Tuttle agreed with Member Chororos, noting that the expansion is upward and there's nothing behind the property but a wooded area, and the only expansion out is the minisplit. He explained that it seems reasonable and it's a great application with lots of info. .

Member Piela commented that he doesn't know how the applicant could push it back to 28 and the floor plans look great.

Member Mikolaities explained that he was struggling with height, but everything else is fine. He asked the applicant to confirm that the total living space would be 1,920 square feet.

Chair Driscoll opened to the public at 9:48 PM

Member Maxwell confirmed that it would be approximately 1,920 square feet.

Member Mikolaities explained that the board gets requests for height frequently and he wants it on the record that the house is roughly 1,920 square feet, not 4,000 square feet to avoid setting a precedent.

Member Tuttle confirmed the home's living space would be 1,920 square foot.

Chair Driscoll asked for information regarding the septic.

Mr. Maxwell explained that the septic isn't being changed. He currently has two 1000 gallon tanks; one is a holding tank, the other is a pump chamber with extra capacity. He explained that it's pumping into a raised leach field on 28's property in the back lot, which was delineated with the lot line revision at that time.

Chair Driscoll asked Mr. Maxwell if he's done any modifications or installations of septic since he purchased home.

Mr. Maxwell explained that he has not, other than replacing the pump a couple of times and maintaining the concrete.

Chair Driscoll explained that while the applicant is not increasing the number of bedrooms or inhabitants in the house, he has concerns regarding the increase of square footage. He explained the need for conscientiousness regarding height in this neighborhood, but explained that this would not impede anyone's view. He explained that there's a uniqueness to the house and lot, that stormwater is not changing much, but that they would need to put verbage on pervious pavers so it's maintained.

Planning/Zoning Administrator Reed explained that previous verbage has read, "Installed and maintained to remain pervious."

Chair Driscoll explained the condition regarding pervious surface maintenance.

Member Chororos noted one change to the application: the "addition of impervious pavers 11.5'" should be changed to say "pervious pavers".

**Motion by Sandra Chororos to approve the application by Sean & Danielle Maxwell for property owned and located at 24 Parkridge Ave, Tax Map 19.4, Lot 11 as presented with the addition of a mini condenser 19.5' from the side boundary and stairs 15.5' from the side boundary where 20' is required, with a note to change the addition of impervious pavers 11.5' to pervious pavers and with the following condition:**

- **Pervious pavers must be installed and maintained to a pervious condition.**

**Member Chororos moved to grant the requested variances because the proposed building height has no impact on health, safety, or general welfare of the community; it does not**

**block any of the neighbors' views; enforcement of the ordinance would result in unnecessary hardship because this is a modest height relief considering the hardships surrounding the applicant's growing family, medical issues, and needs for office space. The value of surrounding properties will not be diminished; in fact, it would improve the character of the neighborhood and others in the neighborhood have also raised the heights of their homes. There will be no overcrowding of the lot since expansion is staying within the same footprint.**

**Seconded by John Tuttle.**

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

Sandra Chororos – Yes, as stated.

John Tuttle – Yes, as stated.

Chris Piela – Yes, as stated.

Gregg Mikolaities – Yes, as stated.

Patrick Driscoll – Yes, as stated.

**2. The spirit of the ordinance is observed:**

Sandra Chororos – Yes, as stated.

John Tuttle – Yes, as stated.

Chris Piela – Yes, as stated.

Gregg Mikolaities – Yes, as stated.

Patrick Driscoll – Yes, as stated.

**3. Substantial justice is done:**

Sandra Chororos – Yes, as stated.

John Tuttle – Yes, as stated.

Chris Piela – Yes, as stated.

Gregg Mikolaities – Yes, as stated.

Patrick Driscoll – Yes, as stated.

**4. The values of surrounding properties are not diminished:**

Sandra Chororos – Yes, as stated.

John Tuttle – Yes, as stated.

Chris Piela – Yes, as stated.

Gregg Mikolaities – Yes, as stated.

Patrick Driscoll – Yes, as stated.

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

Sandra Chororos – Yes, as stated.

John Tuttle – Yes, as stated.

Chris Piela – Yes, as stated.

Gregg Mikolaities – Yes, as stated.

Patrick Driscoll – Yes, as stated.

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

Sandra Chororos – Yes, as stated.

John Tuttle – Yes, as stated.

Chris Piela – Yes, as stated.

Gregg Mikolaities – Yes, as stated.

Patrick Driscoll – Yes, as stated.

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

Sandra Chororos – Yes, as stated.

John Tuttle – Yes, as stated.

Chris Piela – Yes, as stated.

Gregg Mikolaities – Yes, as stated.

Patrick Driscoll – Yes, as stated.

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

Sandra Chororos – Yes, as stated.

John Tuttle – Yes, as stated.

Chris Piela – Yes, as stated.

Gregg Mikolaities – Yes, as stated.

Patrick Driscoll – Yes, also, in the general residence district this would be a conforming type requirement for that portion of the variance application and I want to add that the coastal overlay district is an important district but it's not as important to this property or neighborhood, which is why this is an exceptional case in voting to approve the height requirement.

**Vote 5-0-0** (S. Chororos, J. Tuttle, C. Piela, G. Mikolaities, P. Driscoll in favor)

**Motion by John Tuttle to continue the following applications to the August 22, 2023 meeting at 7:00 PM:**

**1. Leigh & Darren D'Andrea for property owned and located at 0 Jenness Avenue, Tax Map 8.4, Lot 48 request variances from §190-2.4.C(1) for 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.**

**2. 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.**

**12. Ed Farley for property owned and located at 472 Wallis Road, Tax Map 16, Lot 77 requests variances from §190-2.3C(5) for height of barn and existing house for up to 40' where 35' is allowed, from §190-2.3C(2) for barn extension and new roof 19' +/- from the**

side boundary where 20' is required; and from §190-2.3.C(2) for addition to existing house to raise the roof 10' to 15' from the side boundary where 20' is required. Property is in the Single Residence District. Case #40-2023.

13. Erin and Michael Horn for property owned and located at 281 Wallis Road, Tax Map 19, Lot 13 request a variance from §190-2.3.C(5) for construction of a patio with hot tub, a 15' x 20' deck, and an egress window equaling a lot coverage of 17% where 15% is allowed. The property is in the Single-Family Residence District. Case #41-2023.

14. Steve & Tara Danielson for property owned and located at 5 Douglas Circle, Tax Map 8.1, Lot 105 requests variances from §190-2.4.C(2) for a garage 17.7' from the right property boundary and a walkway 12 +/- where 20' is required, from §190-2.4.C(2) for a garage 14.2' from the left side property boundary where 20', from §190-11.1 for a expansion of the existing driveway within 10' of the right side boundary, and from 190-2.4.C(3) for a walkway 20+/- from the front boundary where 30'. Property is in the General Residence District and Aquifer Protection Overlay District. Case #42-2023.

15. Robert S. Batal, Trustee for property owned and located at 94 Harbor Road, Tax Map 9.2, Lot 6 requests a variance from §190-3.1.H.(2)(a),(c), (g) to permit temporary and permanent surface alterations for the removal of the existing retaining wall and replace it with a longer one. Property is in the Single Residence, Coastal Overlay and SFHA Zones (VE18, AO3, AE8, AE9 and X). Case #43-2023. Request to continue to the next available meeting date.

Seconded by Sandra Chororos.

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

Motion by John Tuttle to adjourn at 10:07 PM. Seconded by Chris Piela. All in favor.

Respectfully Submitted,  
Emilie Durgin



# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/Owner:** Leigh & Darren D'Andrea

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

**Application case:** Cases #06a-2023 and 06b-2023

**Date of decision:** August 2, 2023

**Decision:** The Board to continue the application to the August 22, 2023, meeting.

  
Patrick Driscoll, Vice-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

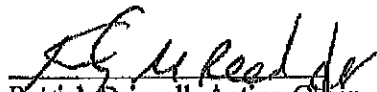
**Applicant/Owner:** Michael R. Parsons & Katelyn B. Randall

**Property:** 34 Perkins Road, Tax Map 5.2, Lot 148  
Property is in the General Residence and the Coastal Overlay District.

**Application case:** Case #28-203

**Date of decision:** July 5, 2023

**Decision:** The Board voted 5-0-0 to continue the application to the September 6, 2023 meeting.

  
Patrick Driscoll, Acting 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:** Bluestone Properties of Rye, LLC

**Property:** 33 Sagamore Road, Tax Map 24, Lot 6  
Property is in the Business District.

**Application case:** Cases #30a-2023 and 30b-2023

**Date of decision:** August 2, 2023

**Decision:** The Board voted 5-0-0 to grant 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 variances granted on 8-26-2020 because the Board found that the reasons for the extension were in good cause because of the supply chain, labor market and extenuating circumstances from COVID,

  
Patrick Driscoll, Vice-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:**

Bluestone Properties of Rye, LLC

**Property:**

33 Sagamore Road, Tax Map 24, Lot 6  
Property is in the Business District.

**Application case:**

Cases #30a-2023 and 30b-2023

**Date of decision:**

August 2, 2023

**Decision:**

The Board voted 5-0-0 to grant 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 exception granted on 8-26-2020 because the Board found that the reasons for the extension were in good cause because of the supply chain, labor market and extenuating circumstances from COVID,

  
Patrick Driscoll, Vice-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:**

Keith Bridge

**Property:**

175 Central Road, Tax Map 12, Lot 21

Property is in the Single Residence and Wellhead Protection

**Application case:**

Case #35-2023

**Date of decision:**

August 2, 2023

**Decision:**

The Board voted 5-0-0 to grant the following variances as advertised and presented because the project goes up 12" and is not an overburden to the existing coverage; making the structure more conforming; back yard open and applicant is also the closest abutter; increase property values and it is a reasonable project.

- §190-2-3.C(2) for a house 18'-6" from the side boundary
- §190-2.3.C(3) for a house 34' from the front boundary where  
§190-2.3.C(5) for building coverage 18.9%
- §190-6.3. A for expansion of a structure on a nonconforming lot

  
Patrick Driscoll, Vice-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:** Sean & Danielle Maxwell

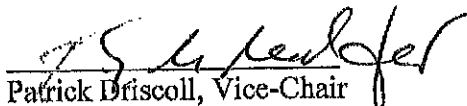
**Property:** 24 Park Ridge Tax Map 19.4, Lot 11  
Property is in the Single Residence and Coastal Overlay District

**Application case:** Case #39-2023

**Date of decision:** August 2, 2023

**Decision:** The Board voted 5-0-0 to grant the following variances from the Rye Zoning Ordinance as advertised to include the widening of the stairways and a mini-split condenser and as presented because it is a reasonable request; not overcrowding and the proposal is in the same footprint; variances not contrary to the spirit of the ordinance; the project does not block views; and it is a modest height relief request.

- §190-6.3.A for expansion of a nonconforming structure on a nonconforming lot;
- §190-2.4.C(1) for expansion of a house vertically 5'6" and 59.8'; for a new entry roof over existing stairs 16.4'; and a pervious patio 3' and 44.8' from the rear boundary;
- 190-2.4.C(2) for expansion of a house vertically 17.1'; addition of impervious pavers 11.5'; a patio 17.5'; widened stairways and a mini-split condenser 6" from the side boundary;
- §190-2.4.C(3) for expansion of house vertically 15.3'; replacement of existing impervious pavers with pervious pavers 3.2'; new entry roof over stairs 11.9' from the front boundary; and
- §190-2.4.C(7)/3.4.D for height 33.1' where 28' is allowed.

  
Patrick Driscoll, Vice-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

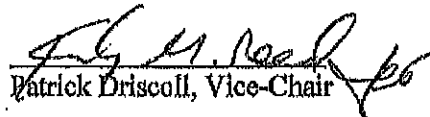
**Applicant/Owner:** Enos General Contracting

**Property:** 715-717 Washington Road, Tax Map 11, Lot 56  
Property is in the Single Residence District

**Application case:** Case #36-2023

**Date of decision:** August 2, 2023

**Decision:** The Board voted 5-0-0 to grant to continue the following application to September 6, 2023 meeting for more information

  
Patrick Driscoll, Vice-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:** Porter Family Trust

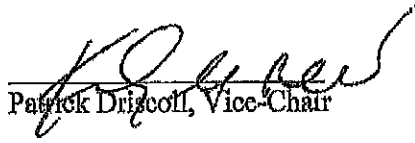
**Property:** 5 Parkridge Ave, Tax Map 17.3, Lot 18  
Property is in the General Residence District and Coastal Overlay Districts

**Application case:** Case #37a-2023

**Date of decision:** August 2, 2023

**Decision:** The Board voted 5-0-0 to grant an Equitable Waiver of Dimensional Requirements from the following section of the Rye Zoning Ordinance because it was a violation due to bad faith; there was a substitution of joist; the cost far outweighs; not a nuisance and the height is along with the height of neighbors. It was a mistake and the cost to remedy far outweighs the benefit of removing 4".

- §190-3.4.D for height where 28.4' exists, 28.4' is proposed and 28' is allowed.

  
Patrick Driscoll, Vice-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:** Porter Family Trust

**Property:** 5 Parkridge Ave, Tax Map 17.3, Lot 18  
Property is in the General Residence District and Coastal Overlay Districts

**Application case:** Case #37b-2023

**Date of decision:** August 2, 2023

**Decision:** The Board voted 5-0-0 to grant a continuance to the variance request from §190-3.4.D for height where 28.4' exists, 28.4' is proposed and 28' is allowed to the September 6, 2023 meeting.

  
Patrick Briscoll, Vice-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:** Carrie Webb Olson

**Property:** 44 Pioneer Road, Tax Map 24, Lot 100  
Property is in the Single Residence and Coastal Overlay District

**Application case:** Case #38-2023

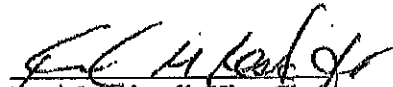
**Date of decision:** August 2, 2023

**Decision:** The Board voted 5-0-0 to grant the following the variance from the Rye Zoning Ordinance as advertised and presented because removing a wooden deck replacing it with pervious pavers; moving the shed further from the resource; making shed and patio more conforming; the value of the surround properties are not diminished.

§190-3.1.H(2) to remove a wood deck replace with permeable patio and relocate shed and install a propane tank within 75' wetland buffer.

The above referenced variance with granted with the following condition from the Rye Conservation Commission letter dated June 12, 2020:

- The owner should remove the invasive plants in the area where the shed is to be relocated.

  
Patrick Driscoll, Vice-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:** Ed Farley

**Property:** 472 Wallis Road, Tax Map 16, Lot 77  
Property is in the Single Residence District

**Application case:** Case #40-2023

**Date of decision:** August 2, 2023

**Decision:** The Board to continue the application to the August 22, 2023, meeting.

  
Patrick Driscoll, Vice-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:** Erin and Michael Horn

**Property:** 281 Wallis Road, Tax Map 19, Lot 13  
Property is in the Single Residence District

**Application case:** Case #41-2023

**Date of decision:** August 2, 2023

**Decision:** The Board to continue the application to the August 22, 2023, meeting.

  
Patrick Driscoll, Vice-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:**

Steve & Tara Danielson

**Property:**

5 Douglas Circle, Tax Map 8.1, Lot 105  
Property is in the General Residence District & Aquifer Protection  
Overlay District

**Application case:**

Case #42-2023

**Date of decision:**

August 2, 2023

**Decision:**

The Board to continue the application to the August 22, 2023, meeting.

  
Patrick Driscoll, Vice-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 S. Batal

**Property:** 94 Harbor Road, Tax Map 9.2, Lot 6  
Property is in the Single Residence District & Coastal Overlay District

**Application case:** Case #43-2023

**Date of decision:** August 2, 2023

**Decision:** The Board to continue the application to the August 22, 2023, meeting.

  
Patrick Driscoll, Vice-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:**

Brenda Dale

**Property:**

630 Washington Road, Tax Map 11, Lot 78

Property is in the Single Residence District & Coastal Overlay District

**Application case:**

Case #44-2023

**Date of decision:**

August 2, 2023

**Decision:**

The Board to continue the application to the September 6, 2023, meeting.

  
Patrick Driscoll, Vice-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.