

TOWN OF RYE – BOARD OF ADJUSTMENT

Wednesday, October 11, 2023

7:00 p.m. – Rye Town Hall

Members Present: Rob Patten, Sandra Chororos, Chair Shawn Crapo, Patricia Weathersby, John Tuttle

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

I. CALL TO ORDER

Chair Crapo called the meeting to order, led the Pledge of Allegiance, outlined meeting procedures, and introduced board members.

II. BUSINESS

Chair Crapo explained that the first application on the agenda was withdrawn: Seacoast Apart-Hotels LLC for property owned and located at 741 Ocean Blvd. for an Administrative Appeal from the Building Inspectors letter dated September 7, 2023.

- 1. Kathy & Timothy Keane for property owned and located at 5 Cable Road, Tax Map 8.4, Lot 176 request §190-6.3.B for demolition of an existing structure, replaced with new; from §190-2.3.C(1) for a house 6.34’/3’/4.05’, pervious patio 6.84’, pervious driveway 4.05’ and a drainage area +1, +3; from the rear boundary where 30’ or ¼ depth is required; from §190-2.3.C(2) for a driveway +10 from the side boundary where 20’ is required; from §190-2.3.C(3) for a house 4.2’/4.4’, a pervious pavers + 1, and drainage area + 1 from the front boundary where 40’ is required; from §190-2.4.C(5) & §190-3.4.E for dwelling coverage 22% where 15% is allowed and lot coverage 29.9% where 15% is allowed; from §190-3.1.H.2(a)(g) for a pervious patio 38.5’, steps 54.3’ and porch roof 57.2’ within the 100’ NHDES Tidal buffer zone; and from §190-3.4.D for height 29.90’ where 28’ is allowed. Property is in the Single Residence, Coastal Overlay, SFHA Zone VE (14). Case #49- 2023.**

Attorney Tim Phoenix of Hoefle, Phoenix, Gormley & Roberts presented the application on behalf of applicant Kathy Keane and applicant **Tim Keane**, who attended via Zoom. **Peter Stanhope**, who wrote a report submitted to the board, was also present via Zoom. **Attorney Monica Kieser** of Hoefle, Phoenix, Gormley & Roberts, and **Shannon Alther** were also present.

Attorney Phoenix provided some background for the application: a zoning request was made in May 2023 for a different structure which was denied as the board felt it was a small lot and the proposed structure was too large. He explained that instead of arguing for the larger version of the home, they’re presenting a new design for a relatively smaller home. The proposed design is roughly the same size as the existing structure. He explained that this is in the VE14 zone, so

they couldn't keep the existing house and do the work that was needed. He stated that, for drainage, it was important to have the house taken down and built anew. According to Peter Stanhope's report, there would be no diminished property value from this project and the variances requested. He noted that previously an abutter, Tracey Banks, had objected, but they've since worked with her and she's confirmed via email that her concerns have been met. He explained that the house would be moved back 10' to preserve her views. The RCC approves and has issued a new letter of support, which was included in the application, and the applicant is fine with their recommendations. Regarding the permeable pavers, Attorney Phoenix offered to agree to a yearly maintenance inspection and report to show that it's been properly maintained.

Shannon Alther of TMS Architects presented to the board. He discussed the details of the redesign and the accommodations made to preserve the neighbors' view line. He explained that the new footprint is 32 square feet larger to accommodate an elevator so the owners can age in place. He stated that impervious coverage would be reduced from 46.4% to 29.9%. He explained that the hashed area is a flat deck on the first floor with no overhang or roof above.

Attorney Phoenix stated that an abutter, **Len Tierney**, was present. He shares a driveway with the applicant and, to their knowledge, supports the project.

Attorney Phoenix discussed the requested variances noting that a height variance is not needed.

Attorney Kieser stated that the porch roof was an error. Referring to Exhibit B elevations, she stated that there isn't a roof to this porch and it should just say deck: 57.2, not porch roof, and it all relates to a first-floor structure.

Member Patten asked for clarification of the house dimensions. Attorney Kieser stated that the deck base is 57.2 and the deck is just under 10' from east to west, so it'd be about 67'.

Member Weathersby asked for details about the pervious paver walkway and how it would be installed and maintained.

Chair Crapo explained his interpretation that there would be a cross-section, the top blocks may be permeable, and all permeable pavers have striations.

Attorney Phoenix explained that the detail shows why it's pervious, but a final decision hasn't been made for the actual shape and size of the pavers going on the top layer.

Mr. Alther discussed the hatching on the plans that represent techo block pavers.

Chair Crapo asked if this is being coordinated between the two properties. Attorney Phoenix explained that Mr. Tierney will be installing permeable pavers after this project is complete.

Attorney Phoenix discussed the variance requests, citing the laws and constitutional review of public versus private rights. Referencing Peter Stanhope's report, he stated that the project would not diminish the values of surrounding properties. Referring to the ZBA's May meeting minutes and vote, he stated that criteria five, regarding the special conditions of the property, was found by the majority of the board to be met.

Chair Crapo stated that the notice should be corrected to show dwelling coverage of 22.2%, not 22%.

Attorney Kieser explained that, regarding special conditions, the law doesn't require that the lot is the only one burdened by a particular issue, only that it's distinctly burdened.

Attorney Phoenix explained that this lot's location and size were approved in 1986.

Attorney Kieser discussed the board's previous concerns regarding impervious lot coverage and noted that the new proposed coverage of 29.9% meets the Coastal Overlay District requirements.

Chair Crapo opened to the public at 7:53 PM.

Len Tierney, 1 Cable Road, described the history of the lot, his proximity to the discussed property, and his support of the project. He described the proposed design as a "win/win" for himself, the applicant, and other abutters.

Susan Shepcaro of the Rye Conservation Commission stated that the RCC supported the first proposed project and this project. She stated that it's a thoughtful design, FEMA compliant, and the plantings will be replaced or remain during construction. She stated that it would be an improvement.

Member Weathersby asked if this property is serviced by sewer. Attorney Phoenix confirmed that it's serviced by water and sewer.

Chair Crapo closed to the public at 7:57 PM.

In response to Chair Crapo's question, Member Chororos agreed that the board should vote as a package with conditions relayed by the RCC and a condition of permeable paver maintenance.

Chair Crapo noted that drainage should be inspected in the Spring and Fall for debris and if the board moves towards an approval, it would be as submitted and presented, including that condition. He explained that the applicant stated that they would agree to a maintenance plan.

Member Chororos stated that she's okay with this application and appreciates their efforts to make the plan more compliant. She noted that it's FEMA compliant, is in the same footprint, has a reduction in lot coverage, has increased distance from the highest observable tide line, and dwelling coverage is reduced by 5% from the original proposal, and is almost identical to the existing property. The impervious patio would be replaced with pervious, and gravel material would be replaced with a pervious driveway. She stated that for all these reasons she sees the plan as substantially different and agrees with it.

Chair Crapo explained that as this isn't a rehearing, the board doesn't have to evaluate whether the application is materially different.

Member Weathersby agreed with Member Chororos and stated that she could support this application where she couldn't before. She stated that significant effort has been made to make this house within the same footprint as the other, it's pulled back from the tideline, and lot coverage is reduced. She noted that it's reliant on pervious pavers and she would like to see a condition included that they're maintained and inspected. She stated that viewsheds have been opened up, there are no neighbor objections, there is testimony that there's no diminishing value to neighboring properties, and it's a good proposal.

Member Patten agreed that it satisfies the criteria and while he wasn't present for the first application, it sounds like the applicant has gone through iterations that have improved it significantly. He stated that he was in favor of supporting it.

Chair Crapo agreed and discussed the special conditions of the property noting that he agrees that this proposal has improved overall. Member Tuttle agreed.

Chair Crapo stated that the board would vote on the application as presented and submitted, noting a change of 22.2% versus 22% and striking the request for §190-3.4D for height due to wetlands and FEMA.

Attorney Kieser asked if Chair Crapo could indicate that the board determined §190-3.4D was not necessary in the notice of decision. Chair Crapo agreed.

Chair Crapo explained that an approval would be conditioned on adherence to the 9/24/23 RCC letter recommendations, which the applicant has agreed to, as well as permeable paver maintenance to retain permeability and drainage areas inspected as stated per plans.

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

Rob Patten - Yes, as the proposed use does not conflict with the purpose of the ordinance, nor does it alter the essential character of the neighborhood and it doesn't threaten public health, safety, or welfare or otherwise cause injury.

Sandra Chororos - Yes, as stated.

Patricia Weathersby - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

2. The spirit of the ordinance is observed:

Rob Patten - Yes, for the reasons previously stated.

Sandra Chororos - Yes, the project replaces an existing home with a FEMA-compliant home farther from the wetland, provides stormwater management, and significantly reduces overall lot coverage.

Patricia Weathersby - Yes, as stated, and it also increases viewsheds, light, and air in the front of the lot.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

3. Substantial justice is done:

Rob Patten - Yes, the benefit to the applicant is not outweighed by any harm that might come to the public.

Sandra Chororos - Yes, the design places the home farther from the wetland and the utilization of pervious surfaces significantly decreases the lot coverage and viewsheds.

Patricia Weathersby - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

4. The values of surrounding properties are not diminished:

Rob Patten - Yes, expert testimony would suggest that it would do nothing but increase values, and it's FEMA and Code-Compliant.

Sandra Chororos - Yes, it's a more aesthetically pleasing and code-compliant new home that would incorporate interior parking, reduce overall lot coverage, and have a better stormwater management plan.

Patricia Weathersby - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Rob Patten - Yes, the property is heavily encumbered on all sides by zoning restrictions.

Sandra Chororos - Yes, as stated.

Patricia Weathersby - Yes, as stated.

John Tuttle - Yes, as stated; it's a long, narrow lot with no street frontage.

Shawn Crapo - 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.

Rob Patten - Yes, applying these restrictions doesn't serve the purpose of the ordinance in a fair and substantial way.

Sandra Chororos - Yes, as stated.

Patricia Weathersby - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

7. The proposed use is a reasonable one.

Rob Patten - Yes, it's similar to the current use, there is no objection from abutters, and it doesn't alter the character of the neighborhood in any way.

Sandra Chororos - Yes, as stated, and placing a flood-compliant home in the same location with a reduction in lot coverage and an increased distance from the highest observable tide line.

Patricia Weathersby - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Rob Patten - Yes, strict enforcement of the ordinance would deprive the owners of reasonable use of the property.

Sandra Chororos - Yes, this lot in particular is long and narrow, there are multiple factors including front and rear setbacks that make the building envelope difficult to work within. These factors combined create special conditions that are driving these requests for relief.

Patricia Weathersby - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

Motion by Patricia Weathersby to approve the variances requested by Kathy & Timothy Keane for property owned and located at 5 Cable Road for §190-6.3.B for demolition of existing structure, replace with new; from §190-2.3.C(1) for a house 6.34'/3'/4.05', pervious patio 6.84', pervious driveway 4.05' and a drainage area +1', +3'; from the rear boundary where 30' or ¼ depth is required; from §190-2.3.C(2) for a driveway +10' from the side boundary where 20' is required; from §190-2.3.C(3) for a house 4.2'/4.4', pervious pavers + 1', and drainage area + 1' from the front boundary where 40' is required; from §190-2.4.C(5) & §190-3.4.E for dwelling coverage 22.2% where 15% is allowed and lot coverage 29.9% where 15% is allowed; from §190-3.1.H.2(a)(g) for a pervious patio 38.5', steps 54.3', deck 57.2' within the 100' NHDES Tidal buffer zone.

The above variances are granted with the following conditions:

- 1. The applicant adheres to the conditions of the Rye Conservation Commission letter dated 9/24/2023.**
- 2. The permeable pavers are installed and maintained per the manufacturer's specifications to remain pervious.**
- 3. The drainage areas are inspected as stated per plans.**

Seconded by Sandra Chororos.

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

Chair Crapo stated that it was determined that the originally requested height variance was not required. The board voted unanimously 5-0.

Attorney Phoenix thanked the board for holding a second meeting so soon after the first and for the detail the board provided to the initial application, which allowed the applicant to make necessary changes.

- 2. Robin Wehbe owner of Common Roots Café located at 2203 Ocean Blvd, Unit D, Tax Map 5.3, Lot 28 requests a variance from 190-5.0 for parking spaces for additional seats for seasonal outdoor seating. Property is in the Business District, General Residence District, Coastal Overlay and SFHA, Zone AO (2). Case #50-2023.**

Robin Wehbe presented his application to the board, explaining that he was before the Planning Board in August and had a site walk in addition to two meetings to discuss issues regarding use intensification. He stated that the board reached satisfaction and gave a contingent approval as they cannot sanction parking.

Mr. Wehbe explained that letters were submitted to the ZBA and Planning Board and described emerging themes including safety and noise as they relate to traffic, parking, trash, and deliveries. He stated that additional business from these seats would be negligible and noise would not increase. Mr. Wehbe read a written narrative history of his involvement with the property and business and provided a seating plan to the board.

Chair Crapo asked if a barrier would be installed.

Mr. Wehbe stated there would be no barrier and that he discussed safety elements with the Planning Board. He stated that there are requirements for curb heights and they are below that requirement.

Chair Crapo expressed his concerns about waiters or patrons falling off the curb.

Mr. Wehbe stated that the Planning Board discussed this and they will be painting a yellow line and putting striped marks along the area. He stated that he's discussed this extensively with the Fire Department and Planning Board.

Member Weathersby asked if there had been any discussion of car doors opening into the table area. Mr. Wehbe stated no, there's almost 3' of space between the tables and the parking area. Also, there is no table service, just takeout.

Member Chororos expressed her concern that there needs to be something there to keep patrons safe.

The board discussed the safety of seating in close proximity to the curb and to parking.

Member Patten asked if anyone had driven up on the curb in all the years Mr. Wehbe had been there. Mr. Wehbe stated that that's never occurred.

Member Weathersby asked if the takeout window was remaining, and Mr. Wehbe stated that it would remain. Member Weathersby asked if there was enough room for everyone waiting in line and sitting at tables. Mr. Wehbe stated yes, it's self-service, there is no hostess or service.

The board discussed the use of the space and seating area as well as the safety of the curb and parking lot.

Chair Crapo recalled that the business used to be busier with less seating.

Member Chororos wondered if the seating could be moved to an alternative location. Mr. Wehbe stated that this area provides the largest physical safety barrier.

Member Weathersby asked if the parking spaces in front are owned by the state or by Mr. Wehbe.

Mr. Wehbe stated that he called DOT who explained that the 50' on either side of the yellow line is owned by the state, which goes into most people's front yards. He stated that he doesn't have bollards and there are no bollards at the Carriage House, which has head-on parking.

In response to questions about the location of the seating area, Mr. Wehbe explained that the neighboring businesses are separate properties, he doesn't own them all. He noted that he's had conversations and made a plan with the Fire and Police Departments; he plans to paint the curb yellow and has approval for a two-year test run.

Member Chororos asked if people would have the opportunity to purchase alcohol inside.

Mr. Wehbe stated that nobody is allowed to purchase alcohol and consume it on the property. He has strictly a grocery license.

Chair Crapo opened to the public at 8:41 PM

Frank McDermott of 30 F Street, an abutter, explained that there are four abutters including himself who object to the proposal. He explained that his objection is regarding the parking lot: it's very tight, there's no additional parking space to support 24 more seats, and seems like an accident waiting to happen. He stated that it was not in the public interest to approve the application.

Tom Farrelly of 18 Gray Court handed out a picture taken from Gray Court looking left, noting the limited visibility due to vehicles blocking the view. He stated that the application shouldn't have been heard by the Planning Board as it should have come before the ZBA first. He discussed his objection with the use of the current parking lot.

Chair Crapo clarified that the board is looking at the request to not have additional parking for the requested additional seats.

Mr. Farrelly explained that the additional activity adds to an atmosphere of busyness and adds to the risk of an accident. Mr. Farrelly stated that Mr. Wehbe bought the RGS as a businessman and wants to improve his business at the expense of homeowners.

The board discussed previous proposals at the property which were withdrawn.

Cindy Mailloux of 2197 Ocean Boulevard, a direct abutter, pointed out that the Certificate of Occupancy from the Building Department states it's a retail store and can have no more than 24 seats as previously approved. She explained that the condo docs state that Unit D is restricted to retail sales, and general offices and can have no more than 24 seats, and if changed has to be voted on by people who live there and approved by the Planning Board, which hasn't been done. She explained that she's called DOT to clarify the parking spots and they said those spots are in the right of way and if there is a change of use or capacity then an application has to be sent to the DOT to make changes. She explained that the state made her move her fence back 2' for a clear line of sight.

Planning/Zoning Administrator Reed explained that the condo docs would be amended as soon as approval is given for parking and the Planning Board approved an additional 24 seasonal seats.

Mr. Wehbe stated that the DOT was made aware and has been in touch. The spaces are in the right of way and not part of the parking calculation.

The board discussed the site plan and ownership of the parking spaces.

Heidi Thomas, 17 Gray Court, stated that she's in support of local business and came to speak about safety out of fear for children. She expressed the need for a buffer for safety. She stated that a buffer was discussed on the site walk as large trucks drive quickly from all sides.

Mr. Wehbe made factual corrections to an email that had circulated to abutters. He made corrections to information regarding the condo documents and approval from the condo association, parking regulations and enforcement, and sight lines.

Chair Crapo clarified that Mr. Wehbe is requesting an additional 24 seats but no additional parking. He stated that to get that relief, the board needs to satisfy the criteria.

Member Chororos asked if 29 spaces are what Mr. Wehbe is supposed to have and 16 exist. Mr. Wehbe confirmed.

Chair Crapo stated that the parking table is based on use.

Mr. Wehbe stated that the location is unique because of flux. He stated that they have additional capacity in the summer that they're unable to meet. He stated that parking quadruples in the summer, is not going to impact the neighborhood, and only 13% of customers are sitting down.

Chair Crapo asked Mr. Wehbe for clarification that there's more parking capacity at his establishment in the summer and wondered how that could be.

Mr. Wehbe stated that in the summer, patrons have already found parking elsewhere and are walking into the establishment.

Member Weathersby asked if adding these seats will increase business or give people who are coming to a place to sit and eat.

Mr. Wehbe stated that it would marginally increase business and also give people a place to sit and eat; it's an amenity, which has a small impact on the business.

Member Weathersby asked how many people in the summer are coming to the restaurant from the beach versus customers pulling in just to go to the establishment.

Mr. Wehbe stated that 95% come from the beach and that this is provisionally approved with a two-year trial period.

Member Weathersby asked if Mr. Wehbe would be amenable to installing a railing. Mr. Wehbe explained that it would create more issues than it would solve.

Member Weathersby asked if the tables would stay out at night, noting that the chairs would come in. Mr. Wehbe confirmed and stated that it's rare that all four tables are full. Member Weathersby asked if he'd considered benches instead. He stated that he'd considered it, but that tables and chairs seemed a better solution.

Chair Crapo closed to the public at 9:19 PM

Member Patten stated that this is reminiscent of other applications with objections from abutters in response to a problem that already exists. He explained that that area of the beach is a circus in the summer, but he hasn't correlated an increase in problems or traffic with the addition of the requested seats; furthermore, the seats may consolidate some people who are standing in places that are more dangerous. He stated that he appreciates the neighborhood feedback, but doesn't see causation clearly.

Member Weathersby agreed with Member Patten that this would give patrons a safer and more enjoyable space to sit and the board is tasked with looking at public safety for parking. She noted her interest in the Planning Board's findings.

Planning/Zoning Administrator Reed stated that the first public hearing revealed that beachgoers and residents of the neighborhood were using Mr. Wehbe's trash as their personal dumpster. Since then he's used locks, which has reduced the trash issue.

Chair Crapo referred to parking regulations and explained that there's a reason for minimum parking spaces required for any new building or structure. He clarified that the Planning Board can require additional parking but can't allow fewer parking spaces. He described the definitions and requirements for a fast food restaurant, which is a higher recommended requirement.

Member Weathersby noted that if it were a brand new restaurant they would have to comply, but it exists and is not increasing the number of people by much. She compared the scenario with new housing in Downtown Portsmouth and stated that this seating would not make things worse and could make things better regarding pedestrian management.

Chair Crapo disagreed and stated that he imagined it would draw in more people and increase pedestrian trips across Ocean Boulevard. He stated that he absolutely could not get to the hardship criteria with the addition of 24 seats and zero parking spaces. He stated that the property already has a variance in place to allow for undercapacity.

Member Chororos agreed with Chair Crapo that it could increase business.

Member Patten agreed but stated that customers would find parking along route 1A.

Chair Crapo noted that it would increase congestion in the street.

Member Tuttle agreed with Member Patten that customers would find parking along the street and noted Member Weathersby's point that the same thing happens at Petey's, Ray's, and the Carriage House. He stated that the Planning Board, Fire, and Police Department signed off on it regarding safety and he doesn't see it adding more congestion to the area for vehicle traffic.

Chair Crapo stated that there are reasons for 5.0 and the board's approval or denial shouldn't hinge on safety. He expressed his disagreement with the request to double the seating capacity with no additional parking.

Member Weathersby noted that the Planning Board approval is for two years, at which point the matter will be revisited. Chair Crapo asked if she is proposing a limited-term variance. Member

Weathersby suggested that it could run consecutively to whatever the Planning Board approval is. Planning/Zoning Administrator Reed clarified that the proposal has a two-year expiration, ending October 15, 2025, at which point it will come back to the Planning Board.

Chair Crapo asked for clarification regarding the signage restriction. Planning/Zoning Administrator Reed clarified that the big signage cannot change, there was no discussion of the smaller signs.

Member Weathersby stated that if she were to make a motion to approve, then she would condition it upon continued Planning Board approval of 24 seats.

Member Patten addressed the matter of hardship stating that the way property sits in relation to space is unique to the property, and if the board were to deny the application they would deny a business owner the opportunity to grow their business.

Chair Crapo stated that in 2007 the property was granted a variance. The parking table has evolved over the years, the Planning Board has tweaked it, and it has a rationale and allows for all types of mixed uses. He stated that it doesn't have a Covid provision, but the Planning Board can't reduce parking, they have to be granted a variance and meet the criteria. He stated that there are special conditions of property, but doesn't feel that those conditions merit a zero increase in parking for a doubling of seats. He stated that he doesn't think substantial justice is done as there are 16 spaces and 21 was required and this is pushing things too far.

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

Rob Patten - Yes, it doesn't conflict with the purpose of the ordinance nor does it alter the essential character of the neighborhood.

Sandra Chororos - No, it threatens public safety and welfare.

Patricia Weathersby - Yes, it doesn't affect public health and safety; although I have some concerns about public health and safety, I don't think this will increase congestion in the streets or affect public health and safety by not having those additional parking spaces.

John Tuttle - Yes, because I don't believe it's going to increase congestion in the streets. It's not going to decrease the health or general welfare of the area.

Shawn Crapo - No, for reasons stated previously.

2. The spirit of the ordinance is observed:

Rob Patten - Yes, it isn't going to increase the safety hazard and it might increase safety if people weren't sitting on the curb.

Sandra Chororos - No, there is significantly insufficient parking already there. The numbers are from 2007: it requires 29 spaces, only 16 exist and this is a request for 24 more seats without more parking and that is not in the spirit of the ordinance.

Patricia Weathersby - Yes, for reasons stated by Rob Patten.

John Tuttle - Yes, for reasons stated by Rob Patten.

Shawn Crapo - No, I concur with Sandra Chororos, the spirit of the ordinance is not to have so few spaces for the intended uses of the property and this is torturing the ordinance.

3. Substantial justice is done:

Rob Patten - Yes, although this does not conform to the ordinance, due to the unique nature of the property, to say no would not be justified because the harm to the public is not going to be greater than the benefit to the applicant.

Sandra Chororos - No, the benefit to the applicant far outweighs the benefit to the public.

Patricia Weathersby - Yes, I don't see a benefit to the public by denying this. It's not going to affect the amount of cars, and parking, and most customers are already there and parking elsewhere. I don't see that there is a benefit to the public that would outweigh the hardship to the applicant. The outdoor seating is serving existing customers of the restaurant primarily and I don't think the parking is needed because the people are already there.

John Tuttle - Yes, I don't see a benefit to the public that outweighs the hardship to the applicant.

Shawn Crapo - No, the applicant feels that they're all coming by foot, I don't know if that is concurred, but we also made similar restaurants up the street to guarantee that they have at least five off-site spaces and here we have a request for zero. I can't find substantial justice in relation to the zoning and there is no attempt to comply with zoning.

4. The values of surrounding properties are not diminished:

Rob Patten - Yes, there's an argument to be made that it would increase the values of the surrounding properties: it would make the area more organized and less chaotic

Sandra Chororos - No, we're hearing that this is a measure of beach traffic, it's not proven that there's going to be increased congestion and traffic in the area; values would be diminished.

Patricia Weathersby - Yes, putting more tables and chairs will dress up the look of the place and will better manage the pedestrian flow and therefore not be detrimental to surrounding property values.

John Tuttle - Yes, because it's not adding a spot or more vehicles to the property, it's the same number of vehicles.

Shawn Crapo - No, I believe there are going to be additional vehicles that will overflow into the surrounding properties and diminish the values through congestion and possible property damage through people parking where they shouldn't.

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

Rob Patten - Yes, historically the property wouldn't have been required to have parking spaces so this business developed and in these modern times it's a different property than what we would see for the purposes of a cafe.

Sandra Chororos - Yes, I concur with Member Patten.

Patricia Weathersby - Yes, it's an unusual use in a primarily residential neighborhood. It's been a general store and restaurant for a long time with limited parking; it's an unusual property.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, it is an unusual property, but accommodations have been made that are appropriate and this expansion is unique.

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.

Rob Patten - Yes, because of the way the property is being used currently the parking isn't necessary to have at the property as you can park along the street.

Sandra Chororos - No, this particular property already has close to half of the requirement.

Patricia Weathersby - Yes, as stated by Member Patten.

John Tuttle - Yes, as stated by Member Patten.

Shawn Crapo - No, as stated by Member Chororos and related to previous discussions of the parking chart. There's been no request to try to comply, this chart has already been varied once to be almost half and here there's a doubling of seating with no increase in parking.

7. The proposed use is a reasonable one.

Rob Patten - Yes, it's very similar to the current use and doesn't change the character of the neighborhood at all.

Sandra Chororos - No, nothing's been attempted to try and consider some level of parking in an area that's already congested, it does not make this a reasonable use.

Patricia Weathersby - Yes, this outdoor seating is serving primarily existing customers, there would be some but not many new customers as a result of this.

John Tuttle - Yes, as stated by Member Weathersby.

Shawn Crapo - No, as stated by Member Chororos.

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

Rob Patten - Yes, literally applying the ordinance would restrict the reasonable use of the property.

Sandra Chororos - No, I don't see a necessary hardship here.

Patricia Weathersby - Yes, for reasons previously stated and also because it creates a problem after the two-year trial period if the board were not to allow this to occur and the parking issue would be moot.

John Tuttle - Yes, as stated by Member Weathersby.

Shawn Crapo - No, for previously stated reasons, it's already been varied and we're not even close to enforcement of the required parking and this has no attempt to adhere to the ordinance.

Motion by Patricia Weathersby to approve the variance requested by Robin Wehbe for a variance from §190-5.0 for no additional parking spaces for up to 24 outdoor seats. This approval is co-terminus with the Planning Board's approval of the outdoor seating of up to 24 seats. Seconded by John Tuttle.

Vote 3-2-0 (R. Patten, P. Weathersby, J. Tuttle in favor; S. Crapo, S. Chororos not in favor)

- 4. Chris & Cynde Lingamfelter for property owned and located at 362 Sagamore Road, Tax Map 19, Lot 50 request variances from §190-6.3.A for expansion of a nonconforming structure on a nonconforming lot; from §190-20.3C(3) for construction of a 4' x 12' porch 22', two dormers 20' +/- and for a condenser 18' from Clark Road front boundary where 40' is required; from §190-2.3.C(1) for a condenser 29' +/- from rear boundary where 30' is required; from §190-20.3C(2) for two condensers 20'6" from side boundary where 20' is required. Property is in the Single Residence District. Case #51-2023.**

Chris and Cynde Lingamfelter presented their application to the board, providing some history of the property. Mr. Lingamfelter also introduced **Tom Avalon**, architect, builder, and contractor for the project.

Mr. Linamfelter explained that a variance was granted in 2008 to convert the barn into a living space. He provided photos of the barn and explained that they're not looking to raise the roof but create a traditional gabled roof. They bought the house as an investment, but in the past year have decided to downsize. Referencing a recent accident at this property's intersection, Mr. Linamfelter discussed the proposed change of primary entrance to the home from Sagamore Road, which is currently 22' from the edge of the road. Instead, they would create an entry where the barn is.

Mr. Linamfelter described the four components to the project: the addition of a porch, an increase in volume to the roofline, and a condenser to provide AC for the master bedroom suite. He stated there would be two AC units for the main house.

Mr. Avalon stated that the bump out for the dining area is 20', 4" from the line and the 2x2 condensers will be outside of the window seat area, just behind the bookcase.

Member Patten asked if the notice was written correctly, it was determined that the notice was correct.

In response to Member Weathersby's question about the porch, Mr. Linamfelter explained that this was submitted for the as-built for the previous ZBA application.

Mr. Avalon explained that the garage was rebuilt on the same footprint as the existing barn.

Mr. Linamfelter passed out letters of support from Mary Joe and Tom Quinn, two immediate abutters. He explained he's also discussed everything with all nine abutters.

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

Member Chororos stated that she has no problem with this and it would be aesthetically pleasing.

Member Tuttle agreed that it would be a major improvement.

Member Weathersby stated that it's a modest ask, increases livability, doesn't encroach on setbacks, the placement of the condensers is sensible, it all makes sense, and the relocation of the access is safer.

Chair Crapo stated that the rear door was used more frequently anyway, it's a major improvement to an older home, and the applicant is not asking to blow it out as wide or high as possible. He stated that most of the notice is related to condensers rather than physical expansion, the porch is the only expansion and it's in the center of the property. He stated that he was in support of the application.

Member Patten agreed that it's a modest request.

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

Rob Patten - Yes, it's a modest request, the proposed use doesn't conflict with the purpose of the ordinance, it doesn't alter the character of the neighborhood, and it's not a threat to public safety and welfare.

Sandra Chororos - Yes, as stated.

Patricia Weathersby - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

2. The spirit of the ordinance is observed:

Rob Patten - Yes, for all the reasons previously mentioned.

Sandra Chororos - Yes, as stated.

Patricia Weathersby - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

3. Substantial justice is done:

Rob Patten - Yes, there's no harm to the public.

Sandra Chororos - Yes, as stated.

Patricia Weathersby - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

4. The values of surrounding properties are not diminished:

Rob Patten - Yes, if anything it will increase the values of surrounding properties.

Sandra Chororos - Yes, as stated.

Patricia Weathersby - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Rob Patten - Yes, the property is encumbered by ordinances that were connected long after the house was built on it.

Sandra Chororos - Yes, as stated.

Patricia Weathersby - Yes, as stated, and the corner lot changes the setbacks.

John Tuttle - Yes, as stated.

Shawn Crapo - 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.

Rob Patten - Yes, conditions in this case as presented are such that applying the zoning ordinance literally would not be fair.

Sandra Chororos - Yes, as stated.

Patricia Weathersby - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

7. The proposed use is a reasonable one.

Rob Patten - Yes, there's no change in use.

Sandra Chororos - Yes, as stated.

Patricia Weathersby - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Rob Patten - Yes, strict application of the ordinance would restrict reasonable use of the property.

Sandra Chororos - Yes, as stated.

Patricia Weathersby - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

Motion by Shawn Crapo to approve the application by Chris & Cynde Lingamfelter for property owned and located at 362 Sagamore Road as advertised, presented, and applied. Seconded by John Tuttle.

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

Respectfully Submitted,
Emilie Durgin

PBOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Kathy & Timothy Keane

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

Application case: Case #49-2023

Date of decision: October 11, 2023

Decision: The Board unanimously voted to approve the variances from the Rye Zoning Ordinance as presented on 10-11-2023 and as advertised:

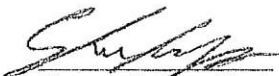
- §190-6.3.B for demolition of existing structure.
- §190-2.3.C(1) for a house 6.34'/3'/4.05', pervious patio 6.84', pervious driveway 4.05' and a drainage area +/-1, +/-3; from the rear boundary.
- §190-2.3.C(2) for a driveway +/-10 from the side boundary.
- §190-2.3.C(3) for a house 4.2'/4.4', a pervious pavers +/-1, and drainage area +/- 1 from the front boundary.
- §190-2.4.C(5) & §190-3.4.E for dwelling coverage 22.2% and lot coverage 29.9%.
- §190-3.1.H.2(a)(g) for a pervious patio 38.5', steps 54.3' and deck 57.2' within the 100' NHDES Tidal buffer zone.

The above variances were granted with the following conditions.

1. The applicant adheres to the conditions of the Rye Conservation Commission letter dated 9/24/2023.
2. The permeable pavers to be installed and maintained per the manufacturer specifications to remain pervious with yearly submittals to the building office on the pavers.
3. The drainage areas to be inspected as stated per plans.

The Board unanimously voted that the following variance was not required:

- §190-3.4.D for height 29.90'.


Shawn Crapo, Chair

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Chris & Cynde Lingamfelter

Property:

362 Sagamore Road, Tax Map 19, Lot 50
Property is in the Single Residence District

Application case:

Case #51-2021

Date of decision:

October 11, 2023

Decision:

The Board unanimously voted to approve the variances from the Rye Zoning Ordinance as presented on 10-11-2023 and as advertised:

- §190-§190-6.3.A for expansion of a nonconforming structure.
- §190-2.3C(3) for construction of a 4' x 12' porch 22', two dormers 20' +/- and for a condenser 18' from Clark Road front boundary.
- §190-2.3.C(1) for a condenser 29' +/- from rear boundary.
- §190-20.3C(2) for two condensers 20'6" from side boundary.


Shawn Crapo, Chair

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire- NOTICE OF DECISION

Applicant/Owner: Robin Wehbe, Common Roots Cafe

Property: 2203 Ocean Blvd, Unit D, Tax Map 5.3, Lot 28
Property is in the Business District, General Residence District, Coastal Overlay and SFHA, Zone AO (2).

Application case: Case #50-2023

Date of decision: October 11, 2023

Decision: The Board voted 3 to 2 to approve the variance from the Rye Zoning Ordinance as presented on 10-4-2023 and as advertised:

- §190-5.0 for no additional parking spaces for seasonal outdoor 24 seats.

The above variance was granted with the following condition to co-term with the Planning Board's conditions.

CONDITIONS OF APPROVAL PLANNING BOARD, SEPTEMBER 19, 2023

1. The Applicant shall apply for and obtain a variance from §190-5.0 of the Rye Zoning Ordinance for a reduction in the amount of required parking spaces.
2. The hours of operation shall be 7:00 am to 5:00 pm.
3. The outdoor seating season shall be April 15th – October 15th.
4. The trial period of the outdoor seating will be from April 15, 2024 – October 15, 2025.
5. There will be no changes to the existing lighting.
6. There will be no changes to the existing signage.
7. Serving liquor is prohibited outside.
8. Outside music and/or speakers are prohibited.
9. Parking for delivery vehicle(s) will be identified to enhance public safety and emergency access.
10. On-site dumpster(s) will be secured and monitored for overflow.
11. Tables shall be arranged to allow passage of approximately 36" for accessibility.
12. The chairs shall be removed and stored inside from 5:00 pm to 7:00 am.
13. The Applicants shall submit a revised Condominium Declaration and Bylaws to the Planning Board reflecting the revisions to the Condominium Association necessitated by the Applicants' proposal. The revised Condominium Declaration and Bylaws shall be subject to the satisfactory review of Town Counsel.


Shawn Grapo, Chair

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see Article VII, Section 703 of the Town of Rye Zoning Ordinance. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.