

TOWN OF RYE – BOARD OF ADJUSTMENT

Wednesday, November 1, 2023

7:00 p.m. – Rye Town Hall

Members Present: Rob Patten, Chris Piela, Chair Shawn Crapo, Sandra Chororos, John Tuttle

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

I. CALL TO ORDER

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

II. BUSINESS

Motion by Chris Piela to continue the rehearing for the D’Andrea Family to the January 4, 2024 meeting and to continue the Farley case to December 6, 2023. Seconded by Rob Patten.

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

Approval of Minutes - September 6, 2023

- Page 10, “Fisher v. Gilbert” should be “Fisher v. Dover”
- Page 24 should read, “unless it fails. This would result in damage to the home [...]”
- Page 23 “Jenna Gregg” should be “Judd Gregg”

Motion by Chris Piela to accept the minutes as amended for the September 6, 2023 meeting. Seconded by Sandra Chororos.

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

Approval of Minutes - October 4, 2023

Motion by Sandra Chororos to accept the October 4, 2023 minutes as stated. Seconded by Rob Patten.

Vote 3-0-2 (R. Patten, S. Chororos, S. Crapo in favor, J. Tuttle, C. Piela abstained)

III. APPLICATIONS

- 1. Joe Pereschino for property owned and located at 88 Alehson Road, Tax Map 16, Lot 39 requests a variance from §190-2.3C(2) for replacement of stairs and front steps 34.5' from the front boundary where 40' is required. Property is in the Single Residence District. Case #52-2023.**

Joe Pereschino presented the application. He explained that the current steps are original to the house (1979/1980), are in disrepair, and are also in the front setback. They're looking to replace the brick steps with a 5 x 11' wooden deck with a shed-style roof over the stairs, which would add another 1' beyond the deck. He stated that it's very similar to the designs of neighboring homes and he's spoken with all abutters who are all very supportive of it. It decreases the front step incursion into the setback by 9". The deck will be a greater square footage in the setback, but overall still significantly setback from the front property line.

Chair Crapo stated that it looks like a fairly large lot, and asked if it would increase coverage. Mr. Pereschino stated that it would not increase coverage.

Member Piela asked if it would be a small farmer's porch between the shutters, which Mr. Pereschino confirmed, explaining that they're hoping to extend the deck to align with the upper windows and the front elevation is roughly 11'.

Member Piela asked what would be done with the spigot near the front door. Mr. Pereschino stated that he's already relocated the spigot.

Chair Crapo opened to the public at 7:12 PM; hearing no comment, the public session was closed.

Chair Crapo opened to the public.

Member Piela asked the applicant if he was measuring the distance to the front from the edge of the step or the drip edge. Mr. Pereschino, referring to the proposed conditions plan, stated that there are two measurements: 34.5 to the front step and 37.5, which is to the 5' deck, but that doesn't include the overhang. The overhang would have been 36.5. Member Piela asked if the applicant is requesting 34.5 or 34.5 +/- . Mr. Pereschino stated that he'd like to request 34 +/- .

The board discussed the application noting that it's a reasonable request, is more aesthetically pleasing, and there's no encroachment on the neighbors. No issues were expressed.

Member Piela asked if railings are needed, noting that they're not included in the drawing.

Mr. Pereschino stated that the requirement for railings on the deck is anything over 30" and they're at 27/28".

Chair Crapo called for a vote, noting that it's one variance §190-2.3C(2), and no closer than 34' is how it will be measured.

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

Rob Patten - Yes, because it doesn't conflict with the basic zoning objectives.

Chris Piela - Yes, for reasons stated.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, because it doesn't alter the essential character of the neighborhood or threaten public safety.

Shawn Crapo - Yes, as stated.

2. The spirit of the ordinance is observed:

Rob Patten - Yes, because the essential character of the locale is maintained.

Chris Piela - Yes, because he's maintaining a significant flat setback.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, the front setback is for light, air, safety, and streetscape; this will not detract from that.

3. Substantial justice is done:

Rob Patten - Yes, there's no benefit to the public that would outweigh the hardship to the applicant by not allowing this.

Chris Piela - Yes, as stated.

Sandra Chororos - 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 would enhance the appearance of the home and lift values everywhere.

Chris Piela - Yes, the applicant has already shared these plans with the neighbors and they all approve.

Sandra Chororos - 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 existing stairs are already in the front setback, which presents a unique challenge.

Chris Piela - Yes, as stated.

Sandra Chororos - Yes, as stated.

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, at the time of construction of the house they didn't think to put the house back far enough; it doesn't need to be applied literally in this case.

Chris Piela - Yes, as stated.

Sandra Chororos - Yes, as stated. Also, this is a very modest increase into the front setback.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

7. The proposed use is a reasonable one.

Rob Patten - Yes, it's the same use it just improves functionality and safety.

Chris Piela - Yes, as stated.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, a deck off of a residential front door is reasonable.

Shawn Crapo - Yes, as stated.

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

Rob Patten - Yes, it would prevent them from enjoying the property and increasing the safety of the property.

Chris Piela - Yes, they couldn't have a step off the front of their house if it were denied.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

Motion by Chris Piela to approve the application of Joe Pereschino for property owned and located at 88 Alehson Road, Tax Map 16, Lot 39 for replacement of stairs and front steps 34' from the front boundary where 40' is required as presented. Seconded by John Tuttle.

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

- 2. Wentworth by the Sea Country Club (WBTSCC) Limited Partnership located at 60 Wentworth Road, Tax Map 24, Lot 61-26 request variances from §190-3.1.E.(8) for a 2'x3' 780 linear ft stone retaining wall within in the wetland buffer; and §190-3.1.H.(2)(a)-(g) for proposed wall within the 100' wetland buffer. Property is in the Single Residence District, Wetland Conservation Overlay District and SFHA, Zone X, AE(9). Case #53-2023.**

Attorney Tim Phoenix of Hoefle, Phoenix, Gormley & Roberts presented the application on behalf of the applicant. **Corey Colwell** (TF Moran), **Bob Diodatti**, **Jason Bastille**, and **Chad Mitchell** (WBTSCC) were also present.

Attorney Phoenix explained that the Rye Conservation Commission issued a new letter dated 10/24/23 and explained that the applicant is willing to comply with the recommendations made in that letter. The board confirmed that they received the letter.

Mr. Colwell explained that their packet includes a 7-sheet set of drawings showing an overview of the club and the location of the wall. Referring to sheet S1 and an aerial photo on sheet C03, Mr. Colwell described the property and the location of this project. He provided a history of the project, which included a proposal to and site walk with the RCC in the Spring of 2019, a presentation to DES in 2020, and an authorization of work by the Army Corps of Engineers in May 2023.

Mr. Colwell explained the purposes for building the wall: to protect the property from flooding, to keep golf balls from entering and plugging the salt marsh, and to create a barrier discouraging golfers from entering the highly sensitive area.

Mr. Colwell explained that the wall is 3' with 2' of fill on one side to keep it from sloping. The project proposes a total of 6,094 square feet of permanent and temporary impact on adjacent freshwater wetlands. He described the reasons for the state permit and the requirement by DES for a vulnerability assessment related to projected sea level rise. He explained that this wall should prevent the creep of water from toppling it up through 2070, at which point the models will be revisited.

Chair Crapo discussed the noticed request for a 2x3' wall, noting that it looks to be taller than 3'. He asked for the height of the reveal.

Member Chororos added to the question, wondering why the request is for 3' and not higher.

Mr. Colwell explained that the golf course side will have a 1' reveal and the salt marsh side will have a 3' reveal. He explained that a wall over 3' would be structurally compromised as water comes up to the wall with a lot of force. He also noted that a 5' wall wouldn't allow people the ability to retrieve their ball and that they're trying to match the aesthetic of other walls on the course.

Chair Crapo asked if that area was considered out of bounds.

Mr. Diodatti explained that the area has never been out of bounds, it's just difficult to find a ball. The intent of the dimensions of the wall is to keep anyone from going over it. The RCC asked for signs to be posted that it's an environmentally sensitive area. He explained it would be a drop area, and there was no reason for anyone to go in the marsh besides personnel to retrieve golf balls.

Chair Crapo asked if it would be a loose stack wall.

Mr. Colewell, referring to a structural drawing, explained that it's a crushed stone footer with central rebar, a pyramid of concrete, and rocks around the central concrete which is held together with mortar.

The board discussed the construction and aesthetic of the wall. Mr. Colwell explained that the idea is to not see the mortar but have it look like a natural stone wall. The wall would also include weep holes for drainage; they're hoping the water will infiltrate the ground and reduce hydrostatic forces.

Chair Crapo, referring to the drawing, asked about the concrete block. Mr. Colwell explained that a drawing was done more recently for the Building Department which shows the fine detail of

the wall on entirely crushed stone. They originally thought concrete footings were needed, but they're not.

Attorney Phoenix addressed each of the variance criteria as they relate to this application, which was included in a written submission to the board.

Chair Crapo noted that there's been a weigh-in from the Army Corps, NHDES, and the RCC and the board is not looking to override them. Regarding the effect of erosion on the retaining wall, he wondered if either systematic pilings, piers, or other reinforcements were discussed.

Mr. Colwell explained the construction process and that they wouldn't excavate this path all at once. Part of the permit requires that they only excavate the amount that they can build and return to a natural state. He explained that they will dig 20', level the area to be 3-4' wide, and the excavator will dig a trench to fill with crushed stone, which will sit level underneath the wall.

Chair Crapo noted that there's currently grass on either side of the wall that has been reclaimed and converted into a wetland. If the tide creeps 10-20', water could be against the wall at which point the base could be washed out.

Mr. Colwell explained that the stone is going to be at least 1-2' below the vegetation and he doesn't think the stone will erode as the stone is flat.

Mr. Diodatti explained that they built a similar wall on the 14th fairway 10-15 years ago where the tide is much more vigorous. He explained that a stone or two will occasionally need repair at the bridge crossing to the fourth hole. He explained that the proposed area is hundreds of yards from Witch Creek and it's a subtle encroachment of water.

Chair Crapo opened to the public at 7:49 PM.

Hugh Lee of 220 Pioneer Road, an abutter to the property, expressed his support of the project, explaining that it's an enhancement to the golf course. He stated his appreciation of Jason Bastille's agreement to maintain the site easement adjacent to 150 Pioneer Road across from the property that RCC acquired. He explained that the RCC has been endeavoring to get a driveway permit for the property and there's a problem with the site distance because of the curb. That problem would go away if the existing site line easement is maintained. Referring to an RCC letter dated 2/2021, he asked if there are any mitigation funds involved in this project.

Mr. Colwell clarified that the letter was the second of three issued by the RCC and that there are no mitigation funds involved in this project.

Mr. Lee stated that this is a great project from many perspectives, not just for the golf course. He stated that abutters to similar wetland areas may come before the board seeking similar protection. He stated that he fully supports this project and urges the board to approve it. Chair Crapo noted that this project required a large task to get through the Army Corps, DES, and the RCC. He discussed the remaining conditions regarding signage.

Jeff Gardener of the Rye Conservation Commission explained that he's been working with Mr. Colwell to get the living shoreline model into their repertoire. He explained the living shoreline model which encourages a more natural interface in Rye's appearance moving forward in light of the inevitable sea level rise. In response to the board's questions, Mr. Gardener explained that, due to marsh migration, this wall will be at the water's edge.

Mr. Colwell agreed with Mr. Gardener and explained that in most situations they want a living shoreline, but a living shoreline would not be ideal in this circumstance. He explained that they want to protect the flow of tidal waters up to an elevation of 8.5. The 5-1 slope will get up to elevation 8.5 which would render the fairway narrow, between 6 and 25 yards wide. He discussed the projected sea level rise and explained that the wall is the least impactful. He stated that living shoreline would lead to nearly twice the impact and that DES preferred the least-impactful alternative, which is why they approved the proposal.

Mr. Diodatti, referring to sheet C3, explained that the wall is pulled away from the edge of the marsh allowing for migration. He explained that they would be surrendering some of the golf course property.

Mr. Gardener explained that this design is intended to protect against erosion and sea level rise through the year 2070.

Mr. Lee asked if the 8.5' number means high water or the highest observable tideline. Mr. Colwell stated that it's the highest astronomical tide line projected in 2070.

Hearing no further comment, the public session was closed at 8:07 PM.

Chair Crapo noted that the project described several meetings with RCC, Army Corps, and DES; it's not a simple stone wall. He stated that the board doesn't have the expertise to delve into that input, but will weigh it as it pertains to wetlands.

Member Piela appreciated that the applicant looked into the living shoreline option and evaluated it. He stated that he'd rather have a soft shoreline over a wall, but this seems like a reasonable explanation as to why that was evaluated in this particular case. He stated that it's a compelling reason from the board's perspective, and the public interest is to keep golfers out of the sensitive

land. He observed that it would be a physical and visual deterrent, which seems to be a reasonable solution to the problem.

Chair Crapo noted that the applicant stated that they'll adhere to RCC criteria and discussed the sign wording.

Member Tuttle discussed the variance criteria as they relate to this application. He stated that it's not contrary to the public interest because it's not going to alter the essential character of the environment. If anything, it will increase public safety by not having people intrude into the marsh as much. Substantial justice is done because the applicant testified that denial of the application would take away land from them in the future. The value of the property would increase and it would increase the values of properties on Wentworth Road because water could someday encroach on those houses. Regarding special conditions, it's a very large piece of property right above the tidal waterway on multiple sides. The proposed use is a reasonable one as it will preserve peoples' happiness as they can continue to play golf. Literal enforcement of the ordinance would result in unnecessary hardship because they would lose land which would decrease the value of the property and decrease the value of the club.

Member Piela, adding on, stated that the spirit of the ordinance is observed because they explored multiple methodologies to achieve this (living shoreline) and the RCC has agreed with this project methodology. Everyone is trying to keep the spirit of the ordinance in place as they try to accomplish this necessary goal of retaining as much property as they can in light of rising sea levels.

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

Rob Patten - Yes, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

2. The spirit of the ordinance is observed:

Rob Patten - Yes, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos -Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

3. Substantial justice is done:

Rob Patten - Yes, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos -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, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - 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, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - Yes, as stated.

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, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

7. The proposed use is a reasonable one.

Rob Patten - Yes, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - 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, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

Motion by John Tuttle to approve the application by Wentworth by the Sea Country Club (WBTSCC) Limited Partnership located at 60 Wentworth Road, Tax Map 24, Lot 61-26 as advertised and presented with the following conditions:

- 1. The applicant adheres to the conditions of the Rye Conservation Commission letter dated 10/24/23, DES letter dated 2/4/22, and Army Corps of Engineers letter dated 5/2/23.**

Seconded by Rob Patten.

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

- 3. Delvin and Ana Arnold for property owned and located at 1220 Ocean Boulevard, Tax Map 17.3, Lot 37 request a variance from §190-2.2.D(2)(a)(1) to allow for increase of a building footprint of a dwelling by constructing a deck, a garage with living space, and relocating the driveway on a lot with two or more principal dwellings. Property is in the General Residence District, Coastal Overlay District and SFHA, Zone AO(3), VE(20). Case #54-2023.**

Delvin Arnold presented the application and explained the scope of the project to tear down the existing 30x50 structure (which includes living space, a two-car garage, and a 30x50 deck), relocate a 24x30 garage to the west side of the property, and build a 30x16' deck to replace the 30x50 structure that was torn down.

Mr. Arnold stated that he was here requesting a variance from §190-2.2.D for multiple dwellings on one property, but observed that it doesn't appear that any restrictions are being violated.

Member Patten asked if they would relocate the driveway farther from Wallis Road Extension.

Mr. Arnold stated that they would bring it closer to Wallis Road Extension.

Chair Crapo asked if the new proposal shows the berm outside of the front wall before it peaks.

Mr. Arnold explained that the berm is where the mailboxes are now. He explained that they had to move the fence as it was on state property. The berm is now outside of the fence, but it used to be inside of the fence years ago. He stated that they would be reducing square footage and impervious materials, relocating the garage to a place that makes more sense, and taking away a substantial amount of driveway space that has impervious material. He explained the plan to have decking space as part of where the 30x50 structure was.

The board discussed the deck and proposed changes.

Planning/Zoning Administrator Reed explained why Mr. Arnold is before the ZBA requesting a variance from §190-2.2.D.

Mr. Arnold stated that everything is within the setback and there will be a second floor on the garage, but not as a core part of the house.

Member Patten asked if the building footprint would decrease in size.

Mr. Arnold stated that he would be substantially reducing the footprint size.

Chair Crapo noted that the plans show building coverage going from 2,963 to 2,235 and impervious going from 6,652 to 4,265.

Chair Crapo opened to the public at 8:26 PM; hearing no comment, the public session was closed.

Chair noted that Sebago, whose letter is included in the packet, conducted work and reviewed the application for the Planning Board.

Mr. Arnold stated that all members of the association are ok with this project as well and their letter is also included.

The board deliberated and determined that the outcome would result in less bulk and footprint. The structure would be modernized and the driveway makes sense either way.

Member Tuttle discussed the variance criteria as they relate to this application. He stated that this project won't alter the essential character of the locality or neighborhood or threaten public

safety or welfare. It would improve a home in a neighborhood that is getting a lot of upgrades. The spirit of the ordinance is observed because they're observing every other ordinance there is. The denial of this application would create an injustice to the hardship and there's no gain to the public by denying this. It would upgrade and enhance the condominium on this property, which will not alter the character of the neighborhood. The board has testimony that there's an abutter doing the same thing; so, this project will increase the abutter's property rate. Regarding special conditions, this is a condominium complex and there's only one other condo complex abutting this property. The proposed use is reasonable and would cause unnecessary hardship if literally enforced because three of these structures would otherwise need to be removed from the property.

Chair Crapo added that the way it sits uniquely on the corner near the ocean means that it sits higher, so no views are being impacted or obstructed.

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

Rob Patten - Yes, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

2. The spirit of the ordinance is observed:

Rob Patten - Yes, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

3. Substantial justice is done:

Rob Patten - Yes, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - 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, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - 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, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - Yes, as stated.

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, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

7. The proposed use is a reasonable one.

Rob Patten - Yes, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - 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, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

Motion by John Tuttle to approve the application by Delvin and Ana Arnold for property owned and located at 1220 Ocean Boulevard, Tax Map 17.3, Lot 37 as presented with the following condition: Either driveway displayed on the survey dated 10/11/23 by Northeasterly Surveying is acceptable to the Zoning Board.

Seconded by Chris Piela.

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

- 4. Shawn Donohoe and Dorothy Wyman for property owned and located at 1214 Ocean Boulevard, Tax Map 173, Lot 37 request a variance from §190-2.2.D(2)(a)(2) to allow for enlarging the bulk of a dwelling by adding a dormer on a lot with two or more principal dwellings; and from §190-2.4.C(3) for the addition of a dormer 24' +/- from the front boundary where 24' +/- exists and 30' is required. Property is in the General Residence District, Coastal Overlay District and SFHA, Zone AO(3), VE(20). Case #55-2023.**

Shawn Donohoe and Dorothy Wyman presented their application to the board. Mr. Donohoe explained that it's a unique situation: he was born and raised in the home and had an opportunity to purchase it. He explained that the property was three units that were turned into condos and redone. He explained that he didn't do a lot of work on it when he purchased it at the beginning and it's time for an update to make it more user-friendly. He explained that they went before the Planning Board, they're staying within the same footprint, and they're gaining a little height, which was approved by the Planning Board.

Member Piela asked if the ridge height would increase. Mr. Donohoe confirmed and explained that's why they're now before the ZBA.

Chair Crapo observed the Planning Board's note that it's not to exceed 28'. Mr. Donohoe confirmed and stated they agreed with that. He explained that they would be adding a dormer but staying within the town regulations according to their approvals. He stated that there would be no landscaping or paving and they would keep the look consistent with the neighborhood.

Ms. Wyman explained that they would increase the peak of the ridge and dormer it so it doesn't look too tall.

Member Patten observed that the plan is to add dormers to the second floor, which the applicants confirmed. Member Patten explained that he has no problem with that, but wanted to clarify that the plan is to add a second floor with dormers.

Planning/Zoning Administrator Reed clarified that she's been working with Doug from Gray Construction, with whom the applicants are working. The presentation to the Planning Board is correct: it's a second story with dormers and they got approval in January. She explained that since then the RPC has caught up with §190-2.2.D. At the time, Gray Construction said they weren't comfortable with dormers as they may extend a bit.

Member Patten suggested the board add wording to state there would be a second story with a dormer.

Chair Crapo agreed that they should include something to acknowledge that they're not taking the existing roofline and popping it up. Observing that currently there isn't a big overhang with soffits, he asked if that would change. The applicants explained that it would stay the same, with the same square footage.

Chair Crapo explained ZBA's process to the applicants: they're being overly clear to eventually help the Building Department understand the request and approval.

The board discussed the Planning Board's approval of the construction of dormers.

Chair Crapo opened to the public at 8:48 PM. Hearing no comment, the public session was closed.

The board deliberated. Member Tuttle stated that it's a reasonable request as it would allow the applicant to utilize the property that he grew up in. Chair Crapo agreed and noted that no views will be impacted, it's not a domineering structure, it makes sense, it's staying within the current footprint, and the applicant has acknowledged that that drip edge will stay where it is. Member Chororos agreed and added that the applicant is making an effort to keep the character similar to that of the neighborhood.

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

Rob Patten - Yes, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

2. The spirit of the ordinance is observed:

Rob Patten - Yes, as stated.

Chris Piela - Yes, they're staying within the footprint and they are staying well under the allowable threshold.

Sandra Chororos -Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

3. Substantial justice is done:

Rob Patten - Yes, no benefit to the public would outweigh the hardship to the applicant.

Chris Piela - Yes, as stated.

Sandra Chororos -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, it would increase the value of the property and the values of properties around it.

Chris Piela - Yes, as stated.

Sandra Chororos - 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, it's a multi-unit condominium.

Chris Piela - Yes, as stated.

Sandra Chororos - Yes, as stated.

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, the intent is to prevent over-bulking, and provide adequate light and air, and there's no reason to apply those restrictions in this case.

Chris Piela - Yes, as stated.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

7. The proposed use is a reasonable one.

Rob Patten - Yes, the proposed use is permitted and therefore reasonable.

Chris Piela - Yes, as stated.

Sandra Chororos - 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, to apply the restrictions literally would not allow them to use the property reasonably.

Chris Piela - Yes, as stated.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

Chair Crapo reopened to the public at 8:52 PM. He asked the applicants if the condo board was okay with the application. Mr. Donohoe confirmed and noted that the waiver approval states, "added second floor".

Motion by John Tuttle to approve the application by Shawn Donohoe and Dorothy Wyman for property owned and located at 1214 Ocean Boulevard, Tax Map 173, Lot 37 for a variance from §190-2.2.D(2)(a)(2) to allow for enlarging the bulk of a dwelling by adding a second floor with dormers on a lot with two or more principal dwellings; and from §190-2.4.C(3) for the addition of a second floor and dormers 24' +/- from the front boundary where 24' +/- exists and 30' is required. Seconded by Chris Piela.

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

5. Seacoast Apart-Hotels, LLC for property owned and located at 741 Ocean Boulevard, Tax Map 23.1, Lot 28 requests a variance from §190-2.10.C(3) for a sign 7' from the front boundary where 30' is required. Property is in the Business District, Coastal Overlay District and SFHA, Zone AO(3). Case #56-2023.

Doug Palardy, representing Seacoast Apart Hotels, presented the application to the board. He stated that the request is to move the existing approved sign a total of 12' at an angle, so it would move 7' closer to the setback, which is already nonconforming in its location. They're looking to move it to a location where it can be seen as the view is currently blocked by vehicles.

Member Piela recalled when the application for the sign was before the board and asked if this was an unforeseen issue.

Mr. Palardy confirmed it was unforeseen and explained that with the other challenges of renovating, they didn't feel like moving it at that time. He stated that after 2.5 years it's become challenging and problematic. The sign is for wayfinding and advertising; it's frequently missed and has been damaged by the snow plow. He explained that NHDOT approved this location as long as it was not under power lines, which it is not.

Member Patten asked how far it currently sits from the setback. Mr. Palardy explained that it's 14' and would move to 7', becoming more centered and closer to the road.

Member Chororos asked if DOT had any issues with this. Mr. Palardy stated that they did not. She asked if snow is an issue. He stated that it's not as it's 7' to the line, but 7-8' before you reach the pavement. He stated that he drives here from the traffic circle and every business and school sign is at this distance or closer.

Chair Crapo pointed out that snow damage to the sign may be just as much or more if placed closer to 1A.

Mr. Palardy stated that the sign's location doesn't block the view exiting Pollock Drive or exiting the motel and two letters of support were submitted by abutters.

Member Chororos asked if the property is in the wetland buffer and whether RCC weighed in. Mr. Palardy explained that it's not in the wetland buffer, that it's not changing from one zone to another, and that the RCC didn't weigh in.

Planning/Zoning Administrator Reed explained that there's an October 4, 2023 letter included in the packet from Kara, who spoke with the RCC's Suzanne McFarland. In speaking, Ms.

McFarland determined that this application wouldn't need to go before the RCC as it's not in the wetland conservation overlay district. Ms. Reed stated that there are letters of support from Kelly Coffee and Judy Smith for signs and the apartment. One abutter is directly to the north, the other is on Pollock Drive.

Member Piela observed that none of the sign zoning has anything to do with the placement of a sign in a yard. He stated that the applicant has to have a 30' front yard, which he does, so he's looking for 2x2' pavers in the setback to put the sign on; it's qualifying as a structure.

Planning/Zoning Administrator Reed explained that the Building Department determined it's a structure and needs structural relief.

Member Piela stated that a sign advertising a business should be relatively close to a road, while not obstructing vision, to advertise a business.

The board discussed the sign ordinance, other signs in town, visibility, and the applicant's previous sign-related requests.

Chair Crapo invited Mr. Palardy to speak to the criteria, as the board needs to find a hardship to meet the criteria.

Mr. Palardy discussed each of the variance criteria as they relate to his application.

Chair Crapo asked if the original sign was powered by a conduit, which Mr. Palardy confirmed. He explained that when the sign was properly illuminated there was a box for the trench line to extend power, it was not creating new power where none existed.

Member Patten noted that, regarding hardship, to literally enforce a 30' setback for a sign doesn't seem reasonable.

Member Piela asked if the current sign location is 28' from the road. Mr. Palardy explained it's 14' from the lot line and 28' from the road. Member Piela asked if it was not compliant to begin with, which Mr. Palardy confirmed. Member Piela agreed with Member Patten that literal enforcement doesn't make sense. He noted that Mr. Palardy is willing to assume the risk of snow plow damage.

Chair Crapo explained that the existing location was the old location, so the base was already there. If, in doing the renovation, they had wanted to put the sign there they would have needed a variance, but it was grandfathered in. The replacement and expansion of the sign and the

illumination put it under different criteria. He noted that it's not in the wetland setback, but asked what the bell-shaped line represents.

Planning/Zoning Administrator Reed explained that it's the Limited Wave Action map for FEMA and doesn't have anything to do with setbacks. She explained that FEMA maps are based on history and elevations.

Chair Crapo opened to the public at 9:14 PM; hearing no comment, the public session was closed.

Chair Crapo stated that he agrees with Member Patten that both locations are within the front yard setback and this relocation would be closer to route one.

Member Piela expressed that he's sympathetic to the reasons for moving given the fact that Mr. Palardy had to move parking to be more fire compliant and currently the parking blocks visibility to the current sign location.

Member Tuttle stated that he agrees with Member Piela, that the board should look at this as a concrete pad and not a sign.

Member Chororos noted that there are no abutter concerns or traffic concerns and that a significant number of signs in town are closer to the road.

Member Tuttle addressed each of the variance criteria and determined the following: The variance is not contrary to the public interest as it won't threaten public safety or welfare. The spirit of the ordinance is observed because the sign will be moved to increase business and also decrease the footprint of the sign by two square feet at the base. Substantial justice is done because denial of the applicant would create an injustice to the business and there would be no gain to the public; in fact, NHDOT stated that this location is fine. Upgrading and enhancing the location of the sign is not going to devalue properties because it's not going to be right next to a property line, it would be in the middle of the property that goes a substantial distance on either side. Regarding the special conditions of the property, it's a business-zoned property and every other property around it is a residentially-zoned property. The goal of the ordinance is to prevent over-bulking of land and provide adequate light and air; this meets both those criteria. A sign for a business advertising near the roadway is a reasonable use. If the board were to literally enforce this ordinance, the sign would have to be in the pool area, which would be blocked by brush and a structure so it wouldn't be visible by the street.

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

Rob Patten - Yes, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

2. The spirit of the ordinance is observed:

Rob Patten - Yes, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

3. Substantial justice is done:

Rob Patten - Yes, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - 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, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - 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, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - Yes, as stated.

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, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

7. The proposed use is a reasonable one.

Rob Patten - Yes, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - 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, as stated.

Chris Piela - Yes, as stated.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

Motion by John Tuttle to approve the application by Seacoast Apart-Hotels, LLC for property owned and located at 741 Ocean Boulevard, Tax Map 23.1, Lot 28 as presented. Seconded by Chris Piela.

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

Motion by John Tuttle to adjourn at 9:21 PM. Seconded by Chris Piela. All in favor.

Respectfully Submitted,
Emilie Durgin

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Joe Pereschino

Property:

88 Alehson Road, Tax Map 16, Lot 39
Property is in the Single Residence District

Application case:

Case #52-2023

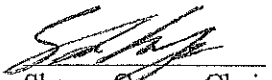
Date of decision:

November 1, 2023

Decision:

The Board unanimously voted to approve the variance from the Rye Zoning Ordinance as presented on 11-01-2023 and as advertised:

- §190-2.3C(2) for replacement of stairs and front steps 34.5' from the front 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: Wentworth by the Sea Country Club (WBTSCC) Limited Partnership

Property: 60 Wentworth Road, Tax Map 24, Lot 61-26
Property is in the Single Residence District, Wetland Conservation Overlay District and SFHA, Zone X, AE(9).

Application case: Case #53-2023


Date of decision: November 1, 2023

Decision: The Board unanimously voted to approve the variances from the Rye Zoning Ordinance as presented on 11-01-2023 and as advertised:

- §190-3.1.E.(8) for a 2'x3' 780 linear ft stone retaining wall within in the wetland buffer.
- §190-3.1.H.(2)(a)-(g) from proposed wall within the 100' wetland buffer.

The above variances were granted with the following conditions:

1. The applicant adheres to the conditions of the Rye Conservation Commission letter dated 10/24/2023:
 - a. The ongoing 5-year plan to remove invasive phragmites in the project area continues.
 - b. A minimum of two (2) signs stating, 'Environmentally Sensitive Area – Do Not Disturb,' to be installed along the wall.


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.



**RYE CONSERVATION COMMISSION
10 CENTRAL ROAD
RYE, NEW HAMPSHIRE 03870**

October 24, 2023

RE: 60 Wentworth Road Tax Map 24 Lot 61-26 Owner: WBTSCC Limited Partnership

The Rye Conservation Commission (RCC) conducted a site walk at the Wentworth by the Sea Country Club (WBTSCC) on May 28, 2020, to review a project on the 3rd and 9th Holes that proposes to build a retaining wall to keep the salt marsh on Witch Creek from encroaching further onto the fairways. The marsh has been flooding over time and has rendered the marsh side of the fairway into a wetland. Corey Colwell presented and explained the history of the two holes and the conversion of the fairways into wetland and marsh which then become the property of the State of New Hampshire.

The RCC issued recommendation letters on December 8, 2020, and February 21, 2021, stating its opposition to the project as proposed because the commission felt that the creation of a Living Shoreline was a better solution to the problem since it would have a lesser impact on the wetland resource.

Mr. Colwell attended the October 12, 2023, Rye Conservation Commission meeting to present an update on this project. The project has been approved by both NHDES and the Army Corps of Engineers. The Living Shoreline recommendation made by the RCC was not implemented in these approvals. Mr. Colwell noted that the golf course has been in existence for 125 years. Over time, the course has lost portions of its private land to the increase in the Mean High Tide (MHT), which dictates that all land below the MHT becomes public land and reverts to the State of New Hampshire. The proposed retaining wall will prevent additional land from being taken in this way. The permits for this project allow for sand and loam fill to be added on the fairway side of the retaining wall to level off what is currently a steeply sloped area. In addition, the retaining wall will prevent human disturbance in the marsh area. The applicant notes that some lawn that is currently mowed will be taken over by salt water when the wall is in place. All area on the marsh side of the wall will be no mow.

The retaining wall is proposed to be 780-feet long, 2-feet wide and +/- 3-feet high with a total permanent impact of 1,561 S.F. The Living Shoreline option would have a permanent impact of 10,915 S.F. The NHDES requires that the least impactful version of a project be implemented. In this case, installing a Living Shoreline was determined to be more impactful than installing a retaining wall.

The applicant requires a variance for surface alteration in the 100-foot wetland buffer for this project.

Mr. Colwell discussed the progress the Wentworth by the Sea Country Club (WBSCC) has made on the recommendations made by the RCC in the previous letters. He mentioned that the club has created a 5-year plan for removing invasives in this area. The work is currently being done by hand.

Work on this project and another, previously approved, adjacent project will be completed between November 15 and March 15.

The Rye Conservation Commission does not oppose this project subject to the following recommendation:

1. The ongoing 5-year plan to remove invasive phragmites in the project area continues.
2. A minimum of two (2) signs stating, 'Environmentally Sensitive Area – Do Not Disturb.' to be installed along the wall.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read 'Susan Shopcaro', followed by a horizontal line.

Susan Shopcaro, Clerk

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Delvin and Ana Arnold

Property: 1220 Ocean Boulevard, Tax Map 17.3, Lot 37
Property is in the General Residence District, Coastal Overlay District and SFHA, Zone AO(3), VE(20)

Application case: Case #54-2023

Date of decision: November 1, 2023

Decision: The Board unanimously voted to approve the variance from the Rye Zoning Ordinance as presented on 11-01-2023 and as advertised:

- §190-2.2.D(2)(a)(1) to allow for increase of a building footprint of a dwelling by constructing a deck, a garage with living space, and relocating the driveway on a lot with two or more principal dwellings.


Shawn Crapo, Chair

Condition: Either driveway acceptable
by the Board

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: Seacoast Apart-Hotels LLC

Property: 741 Ocean Blvd, Tax Map 23.1, Lot 28
Property is in the Business and Coastal Overlay District and SFHA, Zone AE (9)

Application case: Case #56-2023

Date of decision: November 1 2023

Decision: The Board unanimously voted to approve the variances from the Rye Zoning Ordinance as presented on 11-01-2023 and as advertised:

- §190-2.10.C(3) for a sign 7' from the front 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:

Hoefle, Phoenix, Gormley & Roberts, PLLC
Leigh and Daren D"Andrea

Property:

0 Jenness Avenue, Tax Map 8.4, Lot 48
Property is in the General Residence, Coastal Overlay and SFHA

Date of decision:

November 1, 2023

Decision:

The Board voted unanimously to continue the application Request for rehearing and reconsideration by Leigh and Daren D"Andrea by and through their attorneys, Hoefle, Phoenix, Gormley & Roberts, PLLC for property owned and located at 0 Jenness Avenue, Tax Map 8.4, Lot 48 per NHRSA 677:2 and the Rye Zoning Ordinance §190-7.3 of the Board of Adjustment's August 30, 2023 decision denying requested relief from various requirements of the Rye Zoning Ordinance to the January 3, 2024 meeting.

2024



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: 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: November 1, 2023

Decision: The Board voted unanimously to continue the application to the December 6, 2023 meeting for more information on the height of the barn and plans on the house extension with the plans and drawings to include the addition to the drip edge.


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.