

TOWN OF RYE – BOARD OF ADJUSTMENT

Wednesday, December 6, 2023

7:00 p.m. – Rye Town Hall

Members Present: Patrick Driscoll, 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 application by Ed Farley for property owned and located at 472 Wallis Road, Tax Map 16, Lot 77 to the February 7, 2024 meeting. Seconded by Patrick Driscoll.

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

Motion by Chris Piela to continue the applications by Michael Anderson for property owned and located at 117 Washington Road, Tax Map 17, Lot 20, Lone Star LLC/Matthew & Martha Masiello for property owned and located at 125 Wentworth Road, tax Map 24, Lot 34, and Rye General Store & Grille, LLC for property owned and located at 2203 Ocean Blvd, Tax Map 5.3, Lot 028-00A and Tax Map 5.3, Lot 028-00B to the January 3, 2024 meeting. Seconded by Patrick Driscoll.

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

Approval of Minutes - November 1, 2023

Motion by Chris Piela to approve the November 1, 2023 minutes as posted. Seconded by Sandra Chororos.

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

III. APPLICATIONS

- 1. Elements 9 LLC for property owned and located at 14 Sagamore Road, Tax Map 24, Lot 74 requests variances from §190-6.3.B to raze an existing structure and**

replace with new, from 190-2.11.A(1) To allow residential use of land where such use is not permitted within the Commercial Zoning District; from §190-2.2.I(2) To allow non-residential use of land abutting the boundary of a residential zoning district without providing a 50' wide buffer between the non-residential use and the residential zone district boundary; from §190-2.11.C(3) for proposed parking area 8.9', for a retaining wall 3.4', for a light pole 4.7' from the Sagamore Road front boundary where 30' is required; from §190-2.11.C(3) for proposed patio and balconies 12.4', for a building 21.4', for HVAC condensers 22.7', for generator 20.1', for a parking area 11.0', for retaining wall 9.2' and for a transformer pad 14.7' from the Frontier Street front boundary where 30' is required; from §190-2.11.C(3): To allow for proposed parking area 2.2' from the left yard boundary where 20' is required, from §190-5.0.C for parking 8.9' from the front boundary adjacent to Sagamore Road where 10' is required and for parking 2.2' from the left lot boundary where 10' is required; from §190-3.1(H)(1)(f)/3.1.H(2),(a) for proposed building 62.2', a walkway 41.6', a proposed parking on the north side area 3.2', for proposed parking area on the east side 38.1' and for a light pole 39.' from the wetlands where 75' is required. Property is in the Commercial District. Case #59-2023.

Attorney Derek Durbin presented the application on behalf of the applicant along with Corey Colwell and Ben Hodston of TF Moran and Brian Rodonets of Coastal Architects.

Attorney Durbin explained that the amount of relief requested is to improve existing conditions and nonconformity. He described the property, a 1.3 acre corner lot with 272' of frontage on Sagamore Road and 161.5' of frontage on Frontier st. He stated that 40% of the property is encumbered by a wetland buffer and 50' is encumbered by a residential buffer that applies to commercial use on a property. He explained that the property has a sprawling, one-level building, a 6,825 square foot footprint with several businesses in it. In calculating buildable area, they are limited to use of 13% of the property. He stated that the existing building has no redeeming qualities to save for the future and their plan is to remove the existing structure and parking area and replace it with a mixed-use building for professional office spaces with nine parking units. It would be a slightly smaller footprint than the existing with a slightly larger building, but shorter in length than the existing.

Mr. Colwell described the challenge in determining the location of the new building considering the isolated pockets of wetland, buffers, setbacks, exposed ledge, and the number of zoning restrictions. He stated they'd be left with about 7000 square feet of buildable area.

Chair Crapo asked if the presented plan is the most updated, noting that it shows a septic plan. He wondered how they could have trees proposed in the same location as the proposed septic.

Mr. Colwell explained that there is no septic with this plan and explained that the site development plan shows the existing trees. He pointed to the location of a drainage/stormwater management reservoir system. He explained that 17 drawings were submitted because the project is required to go before the Planning Board. He presented the plan set to demonstrate how they plan to improve the site.

Mr. Colwell explained that their survey was done by James Verra and Associates and presented their plan set including a site preparation and demolition plan, a site map and layout, grading, and a stormwater plan.

Chair Crapo asked if permeable pavement or hard pavement would be used over the catch basin. Mr. Colwell stated that it would be hard pavement with all direct flow to the catch basin. Also, a pipe reservoir retention system was proposed, which would be underground and would capture most of the back half of the roof runoff.

In response to Member Piela's question, Mr. Colwell explained that the trees on the plan represent existing trees, some of which would have to be removed. He explained that the existing building is at an elevation of 26.5 and the proposed building elevation of 28 is to facilitate drainage.

Chair Crapo, noting that he's never heard of Stormtech or seen these systems used, asked why they're using this system.

Mr. Colwell described the benefits of the Stormtech system, noting that sheet C17 contains more detail about the system. He explained the primary benefit: retention or detention ponds are not needed, it goes under the parking lot and site impact is minimized significantly.

Chair Crapo asked about the system's lifespan. Mr. Colwell explained that these systems are mostly used in commercial applications. He discussed the details of the system and noted that there is maintenance associated with it.

Member Chororos asked what keeps this system from freezing. Mr. Colwell described the system's materials and explained that it's subgrade and deep enough that it won't freeze. He explained that these systems are used commonly in Portsmouth and are a state-of-the-art, well-functioning system.

Chair Crapo asked if there are example systems from the past 10-15 years or if this is completely new. He emphasized that he's never heard of this system and the town has many water issues.

Mr. Colwell stated that these have been around for 10-15 years and the board is unfamiliar because they're used most widely on commercial properties throughout the United States.

Member Chororos asked about the maintenance required. Mr. Colwell discussed the maintenance plan on sheet C17, which recommends maintenance every five years or so.

Member Piela asked how this differs from the system in the rear of the building. Mr. Colwell explained that it's a lot like a septic system. Referring to sheet C16, he explained that a lot more trees would have to come down on the site to dig a swale.

Referring to the 27' elevation marker on the colored drawing, Member Piela asked if everything on the building side of the hashline would be cleared out. Mr. Colwell provided details for the demolition plan. He referenced sheet C-3, showing the existing treeline to be removed, and pointed to sheet C-5 to describe tree removal. He confirmed Member Piela's question that at the 25' marker, everything to the east will be kept and everything to the west will be removed.

Chair Crapo noted that the color plan that was handed out was not accurate. Mr. Colwell stated that the landscape plan is intended to show the proposed landscaping. Member Piela commented that it should be consistent in showing the proposed, not current landscape.

Mr. Colwell presented the utility plan and discussed town water, overhead electricity, the old septic system, and the plan to run electric underground, making a connection to the recently constructed sewer on Sagamore Ave. He stated that a connection for two 500-gallon propane tanks is proposed.

Member Piela asked about the proposed location for the generator and whether it's 5' above ground. Mr. Colwell stated that the generator will be on a concrete pad at ground level. Member Piela commented that the lot would be level and Frontier Street would go downhill. He noted that the generator is at the top of the retention wall, about 7' above. He asked Mr. Colwell for additional information regarding the generator, noting that it would be a robust generator for the building, and wondered about the volume of noise. Mr. Colwell stated that the generator hasn't been sized yet and would be done by a mechanical engineer based on the demand of the building. He stated that this is a typical generator they've used in the past. Member Piela stated his concern that abutters and other residences on Frontier Street would be across from a good-sized commercial generator.

Chair Crapo asked why the generator would be located in the designated residential buffer rather than in the middle, more commercial part of the lot. Mr. Colwell explained that they could put it there, but chose its location because it would be out of sight and easier to service. He stated that a generator doesn't need wetland relief, but noted Chair Crapo's concern that it's not a suitable

location. He stated that the dumpster has to remain in its location because of pick-up, but the generator could go elsewhere.

Chair Crapo expressed his surprise, given the amount of planning that's been done, that the generator hasn't been sized and was placed in the residential zone. Mr. Colwell expressed that there is a lot of permitting associated with this project, and their first step is with the ZBA. Chair Crapo expressed that the applicant should present what they want, where they want it, as they want it currently, not plans as they will be after meeting with other boards.

Mr. Colwell explained that the proposed location for the generator is what they came up with, but they are flexible in changing that location. He noted that, in the past, this board has approved with issued conditions.

Attorney Durbin discussed the generator location and expressed that, if the rest is acceptable to the board after deliberation, then they could remove that variance request and take it separately or condition it on moving out of the residential buffer.

Chair Crapo stated that the applicant is before this board asking to vary the zoning. Rather than looking ahead to their Planning Board presentation, they should be giving their attention to jumping through the hoops of the ZBA application.

Mr. Colwell discussed sheet C7, the landscape plan, sheets C8 and C9 explaining erosion control, sheet C10, a stormwater management plan, and sheet C11, a lighting plan that proposes only four lights, all for parking.

Member Driscoll asked if the four lights exclude the lights coming from the building itself. Mr. Colwell confirmed and explained that these would be light pole fixtures.

Mr. Colwell described sheets C12-C16 regarding construction components to assist the contractor in implementing plans.

Member Piela, referencing sheet c7, asked if the existing trees on the east side are coming down, which Mr. Colwell confirmed. Member Piela expressed his concern regarding light mitigation from a 40' building.

Member Driscoll noted that the proposed ridge height is 35' and the maximum ridge height permitted in the commercial zone is 35'. He asked if they had done all the calculations including fill without needing a height variance. Mr. Colwell confirmed that they measured height from the existing grade.

Mr. Colwell presented a drawing to show the zoning relief necessary.

Member Chororos, observing the nine units and parking within 10' of the lot line, wondered if it could be scaled back. She observed that six parking spaces could be removed and it would still be doable. She asked for an explanation for the proposal of this particular size of the building and why it couldn't be smaller.

Chair Crapo observed that the applicant has taken what could have been an all-commercial proposal and piled residential into it, though it's not in keeping with the master plan or spirit of the ordinance. In evaluating the criteria, he expressed that he's having a hard time getting to the hardship of having any residential here.

Member Chororos asked why this proposal is for mixed-use. She observed that there are affordable housing issues in Rye, but wondered while acknowledging the special conditions of the property if it could be designed to fit this property.

Attorney Durbin explained that the demand for housing is driving the residential component. He discussed the surrounding residential neighborhoods and explained that the owner of the property has business entities and is hoping to locate them in a professional office, which is the demand for commercial use. He stated that they're trying to stay in keeping with the area and meet demand.

Member Driscoll asked Attorney Durbin if he could elaborate on how this building matches the character of the surrounding area.

Attorney Durbin clarified that he was not referring to architecture but to residential use. He also addressed the notion of scaling back, which would take away parking. He stated that currently, the commercial zone buildable area maximum is 75%, but on this property, they're a fraction under 12%.

Chair Crapo referred to the application narrative which describes a 6,600-square-foot mixed-use building, office space, and apartments. He observed that it doesn't describe the amount of space dedicated to office space. Attorney Durbin stated that he had a draft of the preliminary floor plans. Chair Crapo asked why they weren't submitted when they constituted a large amount of the requested relief. Attorney Durbin stated that square footage is not identified on the preliminary floor plans.

Chair Crapo stated that he wouldn't move forward with a vote without having the numbers.

Chair Crapo discussed a list of abutters and the notice of public hearing with an abutter.

Attorney Durbin stated that the office space is approximately 7,000 square feet and the residential component is 8,500 square feet.

Member Chororos asked if the intention is to have one company utilizing all three floors. Attorney Durbin stated that the intention is for the owner's company to occupy the office and use all 18 office spaces. Member Chororos clarified that it would leave 14 spaces for residents or 1.5 parking spaces per residence.

Mr. Colwell explained that the parking is intended to be shared; it would provide residential parking at night and in the early morning and during the day spaces would be freed up for commercial residents.

Chair Crapo stated that's not how zoning works in the town of Rye; agreements can be made between parties, but they must first follow zoning.

Mr. Colwell stated that the alternative would be to add more spaces, requiring more buffer impact and tree removal. He stated that he's seen other projects use shared mixed-use parking with success. He stated that, according to the parking calculation on sheet C4, this proposal meets the parking requirement for mixed-use zoning. The total required and provided is 32 spaces.

Chair Crapo asked if the Fire Department has signed off on this parking configuration.

Mr. Colwell explained that the Fire Department hadn't seen the plan. He stated that a preliminary concept consultation was done with the Planning Board, which led to this design. He stated that it was, for the most part, well received by the Planning Board, though they would have to return for site review and more opportunity to comment.

Chair Crapo discussed his concern that any large vehicle wouldn't be able to turn into that parking lot in the case of fire or emergency. Mr. Colwell stated the building would have a sprinkler system.

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

Chair Crapo observed that there's no residential use to lose as it's a full commercial lot and purchased as such. He asked how this would lead the applicant to any sort of loss.

Attorney Durbin addressed substantial justice and asked the board to consider the economic and financial circumstances; mixing commercial with residential use makes it a feasible project. Regarding hardship to the applicant, Attorney Durbin stated that there isn't conceivable gain to

the public and that any objection heard by the board would be related to the building itself, not residential use.

Chair Crapo clarified that there's currently no residential component to the existing structure, which Attorney Durbin confirmed.

Vice-Chair Driscoll asked Attorney Durbin to elaborate on the criteria regarding setbacks. He noted that this proposal suggests the largest issue is the amount of building in the setback on Frontier Street.

Attorney Durbin explained that along the side is a 30' setback along 161.5' which jumps to a side setback. He stated that it's unique and pointed out that the overall setback encroachment from existing to proposed would be a reduction of 2200 square feet overall.

Mr. Colwell explained the placement of the building: the right of way is on Frontier, so there's no chance of a residential home occupying a public right of way. He explained they're trying to take advantage of the existing buffer, which is an existing driveway that never could be built on. Regarding the drainage system, he explained that if it were moved any further north it would be closer to the wetlands and they're trying to preserve the wetland as much as possible.

Chair Crapo noted that the residential portion of the building with decks is on the residential side of Frontier, which is supposed to be a protected zone. He suggested that it may make more sense for the decks to face the wetland as opposed to Frontier. The board discussed the orientation of the decks related to buffer zones and the neighborhood as well as commercial and residential use of the property.

Brian Rodonets described the building's organization and orientation.

Mr. Colwell shared an overview of the existing and proposed buildings.

Attorney Durbin stated that a letter from Bill Mflouse, a local commercial real estate broker, arrived last minute stating that the project would not have a negative affect on property values. He stated that he forwarded the letter to Planning/Zoning Administrator Reed with another letter from Dana Garvey stating the same. He explained that Laura Stoll is an agent in the same brokerage as Bill Mflouse.

A member of the Barbara Scammon Revocable Trust, 4 Sagamore Road, discussed the granite underneath the wetland and his concerns regarding water runoff and flooding. He discussed the proposed drainage plan and stated that a different plan is needed to deal with water, suggesting that the proposal would cause a rise in the water table and an increase in flooding. He expressed

concern about a reduction in property values and privacy for abutters and stated that the property should be kept as a one-story commercial business.

Karen Oliver of the Rye Conservation Commission stated that the RCC usually provides an investigative report after a site walk but that they agreed they need more information to do an investigative report. She stated that the RCC would like impervious surface calculations, the square footage of isolated wetlands, information regarding the square footage of disturbed areas in the buffer, and the number of trees to be removed. She stated that they didn't have enough information to conclude.

Mr. Colwell stated that the information was relayed to him via Susan Shepcaro and they agreed to provide that information.

Chair Crapo stated that the board wouldn't likely take a final vote tonight and that they may need a peer review on drainage or stormwater.

Don Foster of 10 Frontier Street, a direct abutter, stated that he owns two homes on Frontier and has been a resident since 2004. He described the neighborhood as a nice, quiet residential neighborhood with single-family homes. He noted that it has gotten more energy with Foye's Corner developments and today it's almost impossible to get from Frontier St. onto Sagamore Rd. with the amount of traffic. He stated that a 3-story, 6,600 square foot, 9-resident apartment building would not fit the character and spirit of Frontier Street and expressed concern regarding transient residents and parking on Frontier St.

Phil and Mary Engle of 6 Frontier St. presented a letter from a neighbor, Silvia Stewart, 16 Frontier Street.

Chair Crapo read the letter of opposition from Ms. Stewart for the record.

Mr. and Mrs. Engle described their property as it was when they moved in 2003. Out of concern for the property's proximity to a commercial lot, before purchasing they did their due diligence and looked into zoning ordinances, and met with the building inspector, and town administrator who assured them that any development would be subject to commercial zoning. They noted that the proposed plan glosses over the residential buffer as it exists. They stated that the plan lists 3,834 square feet in the residential buffer, which seems like a low number. They stated that the development in the side yard buffer should be included in the residential buffer calculation. They discussed the variance criteria and their concern regarding mixed-use. They noted that the owner was aware of the zoning restrictions when he purchased the property. They stated they were not against the redevelopment of the property, but it should be within the ordinances, or why have them?

Mr. Colwell described the process for filling propane tanks and generator maintenance.

Member Piela noted sheet C3 shows the existing ledge to be removed within 20' of Engle property. He asked how much ledge would be removed and whether blasting would take place.

Mr. Colwell discussed ledge removal, blasting, dredge and fill practices and the associated risks.

Mr. Foster asked for more description of the retaining wall on the southeast corner facing Frontier St.

Mr. Colwell explained that it's a versa lock retaining wall. He provided notes on the drainage and grading plan and the top and bottom elevations: closest to Frontier St. it's 3' high and at its highest it's 5' high.

Mr. Foster, referring to the letter submitted by Sylvia Steward, asked about the smell of motor oil in the sewer and how it would be addressed.

Chair Crapo explained that it's not necessarily a zoning matter but if all approvals were granted, a restriction could be placed that best management practices are used and the building inspector could then follow up. He stated that existing contaminants would be an EPA matter.

Mr. Colwell explained that the matter was discussed among the Planning Board. There was hazardous waste on the site in the past related to motor vehicle use. DES was involved around 2000, a clean-up effort was made, and DES issued a letter to previous owners in 2010 saying the site is now deemed clean. The information was found in the town file and is public information.

Chair Crapo asked if there is a contaminant barrier and Mr. Colwell stated there is none and that they rely on the DES letter stating that the site is deemed to be clean.

Roy Tieglund, who owns properties at 30 Sagamore Road, 8 Pioneer Rd., and 4 Pioneer Rd. explained that monitoring wells on Sherry Spark's property, 26 Sagamore Road, and on the other side of Creek, owned by Glenn Trefethen, show that dirty dirt is across from Tibbets Oil. He stated that water coming through the sump pump has a film of oil and is contaminated by Tibbets Oil. Regarding the proposed generator, he noted that it would be a diesel generator sitting on a skid tank which would elevate the height. He also expressed concern about the number of parking spots.

Mike Redding, 46 Frontier Street, stated that he agrees with his neighbors. He stated that the building would deteriorate the value of the two abutting properties.

Mark Schlieper, 47 Frontier Street, stated that the building is out of character for the neighborhood, the property could be developed nicely for an office space, but this structure is too big. He stated that it would lower the price of surrounding properties.

Billy Roach, 3 Frontier Street, stated that he agrees with his neighbors. He explained that he lives directly across from the south side of the property and because of elevation change would face a 40' structure across from his front yard. He stated that it's a lot of building in a small area and because of the constraints, there would be a lot of people in a small area too. He expressed concern regarding the parking lot, the increase in activity, and the potential for a decrease in property value.

Deborah Scammon, 8 Sagamore Road, stated that she will be faced with cars coming in and out all night and 40' lights over her property. She stated that she agreed with her neighbors and that she wanted no part of it.

Rich Pettigrew, 13 Sagamore Road, stated that the property should be kept as a commercial property and that he agrees with his neighbors.

Mike Gerrapy, 15 Sagamore Road, stated that he purchased the former Tibbett's property within the last year. He explained that he recently worked on a commercial project on route one where residential is allowed and he generally supports mixed use in municipalities. He stated that without having reviewed this plan, he generally supports the notion of a mixed-use building as long as it's done well. He noted that if the board were to grant a variance of a residential nature, he would anticipate the board would see more applicants with commercially zoned properties before them with similar requests. He stated that he would likely come before the board seeking a similar variance in the future.

Member Chororos asked Mr. Gerrapy if he was referring to condo ownership. Mr. Gerrapy stated that he wouldn't differentiate between rental and condo ownership.

Chair Crapo discussed the two properties and the conditions on deeds to those properties.

Mr. Foster discussed the mass of the proposed unit and the spirit of the residential neighborhood, stating that this proposal would cause privacy and the spirit of the neighborhood to be eradicated.

An abutter stated that the back of their property is all woods and wetlands. They stated that they spent a lot of money installing a septic system before the Atlantic Grill went in. They expressed concern over a parking lot, lights, and a 40' building being installed next to their property and encroaching on the trees and wetland.

Mr. Schlieper expressed concern that if this project were approved, the apartment could later be separated into stand-alone units.

Chair Crapo discussed condo laws, ownership vs. conversion to condo ownership, and what's in the ZBA's purview.

Arthur McMannis of 29 Frontier Street stated his support for his neighbors.

Chair Crapo polled the board to understand whether more information and/or a peer review is needed.

Member Piela agreed that having peer review makes a lot of sense, especially considering that every abutter has mentioned concerns regarding water and drainage. He also stated that he would like specific information about the generator specs and noise.

Member Chororos stated that she would like the RCC to weigh in.

Member Piela clarified that the RCC's letter doesn't preclude a peer review.

Vice-Chair Driscoll noted that while the board hasn't heard the applicant's rebuttal, based on what's been presented, he's not in favor of this application. He stated that he doesn't see it passing any of the requirements regarding use or encroachment and it's not going to affect how he will vote. He stated that he wouldn't want to waste the applicant's money on peer review as, no matter how those come back regarding use and encroachment into buffers, it doesn't pass any of the criteria for him.

Chair Crapo clarified that Vice-Chair Driscoll's preference is to vote at this meeting as he has everything he needs to properly evaluate the criteria. Vice-Chair Driscoll confirmed.

Member Chororos stated that she agrees with Vice-Chair Driscoll as she has concerns at many levels. She stated that it would be hard to meet 4 or 5 of the criteria. She also expressed concerns regarding parking, encroachment on wetlands, size, and that it's out of character for the neighborhood.

Member Tuttle echoed Member Chororos and stated that he didn't think he would vote negatively for all variances, but there are somewhere he could not satisfy the criteria.

Member Piela stated that additional information may not sway him to vote in favor, but he'd like to let the applicant decide whether they want to provide additional information in hopes of changing the hearts and minds of the board.

Chair Crapo invited the applicant's rebuttal.

Attorney Durbin stated that they would like the opportunity to address and speak with abutters about their concerns with additional information.

Chair Crapo suggested a continuance to February or March. Attorney Durbin agreed to a February continuance.

Chair Crapo clarified that, procedurally, they're not closing the public session because the applicant may come back with changes that they may or may not want to add comments to.

Motion by Chris Piela to continue the application by Elements 9 LLC for property owned and located at 14 Sagamore Road, Tax Map 24, Lot 74 to the February 7, 2024 meeting. Seconded by Patrick Driscoll.

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

The board voted 3-2 not to request a peer review of the applicant.

- 2. Monica & Sal Porcellini for property owned and located at 45 Perkins Road, Tax Map 5.2, Lot 138 request variances from §190-6.3.A for an expansion of a nonconforming structure; from §190-2.4.C (2) for an addition 11.25' from the left side boundary and 15.46' from the right side boundary where 20' is required. Property is in the General Residence District, Coastal Overlay District, Case #60-2023.**

Bob Gray of Gray Construction presented on behalf of the applicants. He provided an overview of the property and project explaining that Millenium Engineering did the site survey for the existing and proposed site plan. He described the existing property and presented photos detailing the home's elevations. He described the older four-bedroom cape which has three bedrooms upstairs, a one-story addition off the back of the house, and an undersized one-car garage. He stated that the house is partially nonconforming: the right side of the house is 15.5' from the right side lot line, the front is 29.2' from the existing to the road, and the left side is nonconforming at 15.2' from the lot line. Mr. Gray stated that the project would improve code compliance and function of the home, noting that the garage would go from 11.5' to 14' for a 9' door to fit a vehicle and the new structure would provide a code-compliant primary bedroom suite. He stated that the property is in the Coastal Overlay District and the ridge height would not be increased. He described the increase in dwelling coverage from 8.4 to 10.7 and overall coverage from 16.5 to 16.7. He stated that they're keeping the cape-style and it's in keeping with the character of the neighborhood.

Regarding the left-hand side of the property, Member Chororos asked if Mr. Gray had spoken with the abutter, Gina Kolhase. Planning/Zoning Administrator Reed stated that Ms. Kolhase came in, looked at the plans, and was glad to see they were doing something nice with the property.

Vice-Chair Driscoll stated that the plan looks great. Regarding the encroachment closer to one side, he asked Mr. Gray if he has considered the gutters to make sure water runoff doesn't affect the abutters. He asked if the addition would require a new foundation and if the grade would change to make sure water runoff stays on the property.

Mr. Gray confirmed that they would set a new foundation for the garage and include proper ceiling heights. He stated that they would agree to do stormwater management and that Millennium could have that added to the plan with infiltration.

Vice-Chair Driscoll stated that he'd like best practices to be considered.

Chair Crapo asked if the back part is using the foundation under the existing 2x4. Mr. Gray stated that the foundation has to come off as it doesn't have a proper bulkhead, which will be added.

Chair Crapo opened to the public.

Mr. Gray stated that he feels that the proposed use is a reasonable one to make the home functional and code-compliant

Chair Crapo closed to the public at 10:11 PM.

Member Piela stated that it's a reasonable proposal, a minimal ask, is keeping close to the current footprint, and that he appreciates that the most affected abutter is in favor. He stated that he has no issues at all.

Member Chororos agreed, noting that it's also in keeping with the character of the neighborhood.

Member Tuttle stated that the proposed use is not contrary to the public interest because it does not alter the essential character of the neighborhood or threaten the public's health, safety, or welfare. The spirit of the ordinance is observed because the denial of the variance would not allow the garage space to be utilized in the function that it was designed for and the applicant wouldn't be able to have a bedroom off the back end of the home for future years. Substantial justice is done because there is no benefit to the public that would outweigh the hardship to the applicant if ~4' of relief is given on the western side of the property. Upgrading and enhancing

this property would not devalue the surrounding properties; if anything, it would increase the surrounding property values. The house is an older one and needs updating. Special conditions exist on this property because of the lot's shape and oversizing of this area in the Coastal Overlay District. This home's original construction likely predated zoning ordinances; if the board were to literally enforce the ordinance, the home couldn't be placed where it is. The proposed use is reasonable because it's a residence in a residential area and poses minimal impact. Regarding hardship, the applicant wouldn't be able to use their garage space nor would they be able to have a bedroom on the first floor and they would have a more code-compliant home.

Chair Crapo agreed that it was very reasonable.

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

Patrick Driscoll - 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:

Patrick Driscoll -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:

Patrick Driscoll -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:

Patrick Driscoll - 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?

Patrick Driscoll - 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.

Patrick Driscoll - 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.

Patrick Driscoll - 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.

Patrick Driscoll - 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 Patrick Driscoll to approve the application for 45 Perkins Road, Tax Map 5.2, Lot 138 for variances from §190-6.3.A for an expansion of a nonconforming structure; from §190-2.4.C(2) for an addition 11.25' from the left side boundary and 15.46' from the right side boundary where 20' is required. Seconded by Chris Piela.

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

Motion by Chris Piela to adjourn at 10:18 PM. Seconded by John Tuttle. All in favor.

Respectfully Submitted,
Emilie Durgin

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

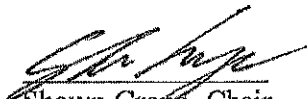
Applicant/Owner: Elements 9 LLC

Property: 14 Sagamore Rd Tax Map 24, Lot 74
Property is in the Commercial District

Application case: Case #59-2023

Date of decision: December 6, 2023

Decision: The Board voted unanimously to continue the application to the February 7, 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: Rye General Store & Grille LLC

Property: 2203 Ocean Blvd, Tax Map 5.3, Lots 028-A and 028-B
Property is in the General Residence District, Business District, Coastal Overlay and SFHA Zone AO Depth 2'

Application case: Case #61-2023

Date of decision: December 6, 2023

Decision: The Board voted unanimously to continue the application to the January 3, 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: Michael Anderson

Property: 117 Washington Road, Tax Map 17, Lot 20
Property is in the Single Residence District

Application case: Case #57-2023

Date of decision: December 6, 2023

Decision: The Board voted unanimously to continue the application to the January 3, 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

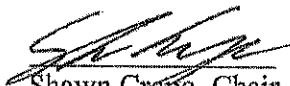
Applicant/Owner: Lone Star LLC/Matthew & Martha Masiello

Property: 125 Wentworth Road, Tax Map 24, Lot 34
Property is in the Single Residence District, Wetlands Conservation District and SFHA Zone AE (8)

Application case: Case #58-2023

Date of decision: December 6, 2023

Decision: The Board voted unanimously to continue the application to the January 3, 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:

December 6, 2023

Decision:

The Board voted unanimously to continue the application to the February 7, 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:

Monica & Sal Porcellini

Property:

45 Perkins road, Tax Map 5.3, Lot 138
Property is in the General Residence, Coastal Overlay

Application case:

Case #60-2023

Date of decision:

December 6, 2023

Decision:

The Board unanimously voted to approve the variances from the Rye Zoning Ordinance as presented on 12-06-2023 and as advertised:

- §190-6.3. A for expansion of nonconforming structure;
- §190-2.4.C(2) for addition 11.25' from left boundary where 20' is required.


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.