

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

**Wednesday, September 6, 2023**

**7:00 p.m. – Rye Town Hall**

***Members Present:*** Sandra Chororos, Vice-Chair Patrick Driscoll, Chair Shawn Crapo, Chris Piela, John Tuttle

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

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

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

### **II. BUSINESS**

#### **Approval of Minutes - August 2, 2023**

- Page 3, “three properties for them”.
- Page 6, “18’ and 6””
- Page 6, “straightforward”
- Page 7, “welfare”
- Page 12, “asking”
- Page 13, “overburdening the property line”
- Page 13, “the house”
- Page 17, “that”
- Page 28, “the home”

**Motion by Chris Piela to approve the August 2, 2023 minutes as amended. Seconded by John Tuttle.**

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

### **III. APPLICATIONS**

- 1. Enos General Contracting for property located at 715-717 Washington Road, Tax Map 11, Lot 56 requests variances from §190-2.3.C(2) for a garage 4.3’ from the side boundary where 20’ is required and from §190-5.0.C for a driveway 2’ +/- from the side boundary. Property is in the Single Residence District. Case #36-2023.**

**Eric Eno** presented the application to the board and explained that he’s doing a project on this property, but lives in Newmarket. He explained that he was before the board last month and there

were some discrepancies regarding the plan. He noted that a new plan was submitted to the board which clarified the height of the building, which is the exact building they plan to put on the property. He explained that he also spoke to the neighbor and agreed to keep the structure as far from the lot line as possible.

Member Chororos asked if they plan to keep the driveway pervious or impervious.

Mr. Eno explained it would be an impervious, paved driveway which is what's there currently.

Member Chororos recalled that the board discussed swale and where the water would come off the front driveway before hitting the second driveway and sheet across to the neighbor.

Mr. Eno explained that in speaking with the road agent and excavator, they're going to do both; a swale on one side to catch water coming past the driveway and they'll tilt the driveway to pitch it toward the back of the property so no water drains to the abutter.

Mr. Eno stated that he was before the Planning Board for a second driveway, which he believes is in the setback.

Planning/Zoning Administrator Reed clarified that the Planning Board approves driveways.

Mr. Eno stated that the Planning Board approved it within the setback as well as the second driveway for the house. He confirmed that they were aware of the swale and discussed it. He explained that the garage was originally 4.4' over the boundary line onto the neighbor's property. He explained they'd planned on tearing the old one down, bringing it in as far as they could, and putting it as close as possible to where the old one was.

Member Piela wondered why §190-6.3 doesn't play into this application. He asked if the applicant should request that variance as it's an expansion of a nonconforming building.

Chair Crapo explained zoning in that section allows you to replace what was there if it becomes more conforming. He explained you would not need a variance from it if you're doing something the language of the ordinance allows.

Member Piela stated that the new proposed garage appears to be twice the size of the existing garage to be removed.

Mr. Eno explained that it's not twice as big. The old one was 28.24' and this is 24.35'.

Member Piela observed that the application seems to fall in §190-6.3B as they're not rebuilding it in kind, but making it somewhat less nonconforming, and it's an expanded structure. He wondered if the board should include that in the requested variances.

Chair Crapo noted its expanded size and observed that, regarding setbacks, it seems to be more compliant.

The board discussed the requested variances as compared with §190-6.3B.

Chair Crapo noted that Chuck Marsden would ultimately have to be the person to grant the building permit -he asked for Mr. Marsden's opinion.

Mr. Marsden stated that he agrees with Vice-Chair Driscoll, that the applicant is making it less nonconforming.

Four board members agreed that §190-6.3B doesn't apply and would not require a variance; Member Piela felt that it would apply to this application.

Vice-Chair Driscoll observed that the plans show a marking 4' from the property line to the clapboards.

Mr. Eno clarified that it's 4' over the property line.

Vice-Chair Driscoll asked if it's 4.3' to the drip edge.

Chair Crapo clarified that the Town measures to the drip edge, not the clapboard.

Mr. Eno stated he'd slide the building over as far from the lot line as he could and he might get to 7-8'.

Chair Crapo stated the applicant asked for 4.3', so if they pull it back and it's more conforming, then it's not going to be an issue.

Vice-Chair Driscoll wanted clarification regarding the 6" marking. He stated that the record should show that the soffit on the ends is going to be 12" off of the drip edge, and it's better if the applicant can move it further over. Noting that the plans say the gutter is over the doorway, he asked Mr. Eno if he's okay with the condition that the downspout will be on the property side as opposed to the side closest to the side yard. Mr. Eno agreed.

Chair Crapo opened to the public at 7:25 PM. Hearing no comment, the public session was closed.

In response to Chair Crapo's question, the board agreed to vote as a package.

Vice-Chair Driscoll stated that this plan helps with clarity, there are no conditions needed, and it's in the record that Mr. Eno will put the gutter and everything into the drip edge. He stated that he's comfortable with the plans and testimony that the board has heard. He stated that he understood what Member Mikolities was saying, but looking at the special conditions of the property, this is vastly more conforming and closer to the town's zoning.

Chair Crapo noted that the entire stretch of buildings in the neighborhood have large lots behind them, which all slope down.

Chair Crapo stated that the board would vote on this together and there have been no proposed conditions. He called for a vote on the application as presented.

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

Sandra Chororos - Yes, because it does not alter the essential character of the locality, threaten public safety, or welfare, and it will resolve a boundary dispute.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

**3. Substantial justice is done:**

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Sandra Chororos - Yes, because they are upgrading a dilapidated garage, building a garage that is in keeping with the character of the neighborhood, and it should increase the value of surrounding properties.

Patrick Driscoll - Yes, as stated, and it creates a separation of properties on boundary lines and holds up the value of that property.

Chris Piela - 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?**

Sandra Chororos - Yes, while there is a great deal of frontage allowing for much to happen on the front end and this is within the allowable frontage, half of the property goes down and back and the site would suggest there are very special conditions that distinguish it from other properties.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, because the existing garage is on the neighbor's property.

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.**

Sandra Chororos - Yes.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Sandra Chororos - Yes, the existing needs to be removed per the boundary dispute, the new garage is narrower than the existing garage, and there's an attempt to move it further from the boundary.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Sandra Chororos - Yes, to have to move it back into the drainage area of the property would result in hardship.

Patrick Driscoll - Yes, trying to incorporate a garage into the existing structure doesn't seem feasible; this seems to be the best place to put it.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

**Motion by Patrick Driscoll to approve the variance request for the property located at 715-717 Washington Road, Tax Map 11, Lot 56 as requested. Seconded by John Tuttle.**

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

**Motion by Chris Piela to continue the application for property owned and located at 65 Big Rock Road, Tax Map 5.2, Lot 59, Case # 46-2023 to the October 4, 2023 meeting.**

**Motion by Chris Piela to continue the application for Kathy & Timothy Keane for property owned and located at 5 Cable Road, Tax Map 8.4, Lot 176 to the October 4, 2023 meeting. Seconded by John Tuttle.**

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

- 2. Ed Farley for property owned and located at 472 Wallis Road, Tax Map 16, Lot 77 requests variances from §190-2.3C(5) for height of barn and existing house for up to 40' where 35' is allowed, from §190-2.3C(2) for barn extension and new roof 19' +/- from the side boundary where 20' is required; and from §190-2.3.C(2) for addition to existing house to raise the roof 10' to 15' from the side boundary where 20' is required. Property is in the Single Residence District. Case #40-2023.**

**Ed Farley** presented the application to the board, explaining that there is a 2016 NOD for the building foundation's side setbacks. He explained that the existing foundation and building were executed by a local builder, Bob Gray. He explained that a high-pitched roof would facilitate faster snow melt, more roof space, and allow the option for solar panels, as well as a closer drip edge to the building itself rather than the abutter's property.

Mr. Farley explained he included the tax map to give an idea of the property's location compared with the abutters. He explained he has a long, narrow property by attrition and is trying to build a barn with a unique 14' ceiling on the first floor and a 9' ceiling on the second floor.

Chair Crapo asked the reason for the height of the roof.

Mr. Farley explained his desire to store cars and have the option to store a camper, which requires a higher ceiling.

Member Chororos asked if that's the reason for the 14' height on the first floor.

Mr. Farley confirmed and suggested that it could serve the purpose of a barn for a future owner.

Member Chororos asked if Mr. Farley would be elevating cars to the second floor. Mr. Farley stated that he would not be elevating cars.

Member Chororos asked what the plans for the second level would be. Mr. Farley stated that he has no plans for the second level. He stated if the board approves, he may take the roof of the existing dwelling and match it to this pitch to conform and raise the side walls of that building. He stated that his current ceiling is pretty short.

Chair Crapo asked if this was just a concept.

Mr. Farley stated yes and explained the project would look very similar to what was presented. He explained that he spoke to Bob Gray and asked for a CAD design for the building. Mr. Gray offered to provide that after this process, so he knows he can build to that pitch. Mr. Farley stated that the previous zoning approval for the foundation didn't include the 18" overhang of the roof, so he also wanted to get that approved.

Member Piela noted that, in recent memory, he couldn't recall an application where the board has approved a 40' structure. He stated that there was one over 35' because the homeowner needed an elevator for a handicapped person. He expressed concern that the height of the barn at 40' is

going to be overwhelming on Wallis Road. He explained that he looked for other structures over 40' in Rye, and noted that the Fire Department is 40'.

Mr. Farley stated that his neighbor across the street has an over-40' building. He stated that there is a barn converted to a home up the street which is much taller than 40'. He stated his barn would be around 4-5 similar homes.

Member Chororos asked Mr. Farley if he intends to add height to the rest of the home at some point.

Mr. Farley stated that the height of his home would be shorter as the first floor doesn't have a 14' ceiling.

Chair Crapo asked why the second floor would need a 9' height. He noted that if that height were dropped down, the roof would have the same pitch but be more conforming.

Mr. Farley stated that there are movable standards. He stated if he removed the roof of the existing dwelling, he could put a room on the second floor of the barn to live while the contractor finishes the rest of the project.

Chair Crapo explained that he'd then be in a situation where there's a dwelling on the lot that's not allowed.

Member Piela explained that there can't be two dwelling units on one lot.

Chair Crapo stated that since the barn is long and it's not to be used as a dwelling space, a storage area doesn't need to be 9' high.

Member Chororos asked if the sprinter van requires a 14' height.

Mr. Farley stated that the sprinter van requires 12'.

Member Chororos asked if Mr. Farley would consider coming down to 13'.

Mr. Farley explained his future goal is to put a used school bus in the barn.

Chair Crapo explained that the door needs a header for clearance.



Mr. Farley explained that's why he needs a full beam width. He stated that he'd like to have the second floor as an option for storage or if a contractor bought the property, they could put their machinery there.

Member Piela explained that you can't run a business there. He explained that he was considering the criteria of hardship. He explained that Mr. Farley could still have a second floor in the barn even with a 14' height if the ceiling of the second floor were lowered by 5'.

Mr. Farley stated it would be a tall, narrow pitch and wouldn't block any views.

Chair Crapo explained that the board looks to understand the hardship in order to grant a variance. He stated that a desire to remove snow load faster is nice, but not driven by code. He asked Mr. Farley what zoning reasons there were for this high pitch.

Mr. Farley explained his request is driven by aesthetics and snow removal.

Member Piela stated that he spoke with the Fire Department and they can't get to the 40' height of their building with a ground apparatus (ladder), which is a potential safety concern.

Mr. Farley stated that he's already built a gravel driveway so the whole building is accessible from the street without maneuvering around blockages. He stated if his neighbor's house across the street is 40', his building should be considered lower because he wants 9' on the second floor with the option to put a camper on the first floor.

Vice-Chair Driscoll explained that the concern is not regarding what will be stored there. He stated that he appreciates the applicant pointing out other buildings with that height, but a historically accurate roof pitch around the area is a 12 pitch: 1' to 1'. He explained that pitch seems to effectively shed snow load and rain. He explained he's trying to understand the benefit of going from a 12 to 17 pitch. He explained that he's considering the criteria regarding the special conditions of the property related to the applicant's desire to enhance the style, aesthetic, and innovation of buildings in town. He stated that there has to be a more substantial affirmative reason and he would need a more substantial reason to satisfy criteria #5 and to vote in favor of the application.

Mr. Farley explained that he's not sure when the 35' height peak came around, but the town is in a snow zone and a higher-pitched roof should be an option and reviewed as a good reason on its own. He explained that he wants to bring this aesthetic to the town, and it may be a practical option. He explained that it's a better design for solar panel installation and more would drain off onto his property.

Chair Crapo explained that the drip edge would still be in the same place. He explained to Mr. Farley that the board grants variances based on criteria.

Member Piela explained that if the board denies the application, the applicant cannot come back with the same plan. He suggested Mr. Farley could ask for a continuance and come back with a more robust plan or stronger argument. He explained that this is tactical advice per state case law.

Mr. Farley questioned a previous application where a 40' height was granted.

Chair Crapo explained that each application is unique and the application discussed had nuances regarding FEMA regulations and the slope of the land. He stated that most of any applications they've granted had to do with slope or some uniqueness where normal construction standards couldn't provide the height they need. He noted that this application is for one person's desire to park large vehicles, which doesn't necessarily qualify as a hardship with zoning.

Mr. Farley noted that parking a school bus or camper in his driveway may cause discord between himself and his abutters.

Chair Crapo explained that the consequences for an applicant's vehicle choice are not something the board is allowed to contemplate. He explained the board can contemplate the criteria as they relate to a hardship that's caused under that criteria, but simple desire does not reach that level. He explained the board could vote on the application tonight or continue it.

Chair Crapo stated that he has no problem with the dimensions to the boundary, but as he hasn't opened it to the public, he doesn't know if people are present to speak for or against it. He noted that the board would find the height difficult to approve as it doesn't seem to be driven by the criteria for hardship.

Mr. Farley discussed the phrase, "Life, Liberty, and the pursuit of Happiness" and the ordinance in place limiting height, stating that it isn't necessarily a modern way of living. He asked the board, if he were to continue his application and return, what he would ask for as a better reason as to why this should or could be approved.

Chair Crapo explained that the board hasn't gotten to a point of a vote, but he has an idea of how the board would vote. He outlined what would happen if the board were to vote as opposed to coming back with a continued application. He explained that if the board were to deny the application, Mr. Farley wouldn't be able to return with the same application unless it were materially different from the first and described the Fisher v. Gilbert case to explain the reasoning.

Vice-Chair Driscoll explained that the board is not here to tell an applicant whether they like a project or not but to look at the zoning ordinance and interpret whether the plans are in agreement with the town zoning ordinance. He stated that the Planning Board could discuss the project, whether they like it, and some other ideas, but the ZBA just looks at zoning ordinances.

Member Piela stated that maybe the roof/ridge heights need to be adjusted in town, but explained that that's a Planning Board discussion.

Planning/Zoning Administrator Reed explained that the Planning Board does not deal with single residences.

Chair Crapo explained to Mr. Farley that he could discuss putting forth a ballot initiative with the Planning Board to change zoning for heights. He described the process of changing zoning through a Planning Board initiative.

Mr. Farley and Chair Crapo discussed the barn's height as it relates to the board's criteria. Mr. Farley noted that nearby homes have roofs of a similar height.

Chair Crapo opened to the public at 8:04 PM. Hearing no comment, the public session was closed.

Chair Crapo reopened to the public explaining that the last request is for an addition to the existing house to raise the roof 10-15' from the side boundary. He asked if the addition would be 10-15' or if Mr. Farley was requesting to go higher.

Planning/Zoning Administrator Reed explained that the request is to go up; it's not going closer to the side boundary.

Chair Crapo stated that he would make a motion to continue to November so Mr. Farley could provide plans to show the addition to the house. In response to Mr. Farley's question as to why the board couldn't just vote on the barn, he explained that Mr. Farley doesn't have a complete application.

Member Tuttle explained that the application is all one case number and the board can't split up a vote.

Mr. Farley explained that he was trying to be practical and that the builder was waiting for approval from the board.

Chair Crapo stated that Bob, the builder, has been before the board to present. He explained that the board doesn't have plans to show what's being requested.

Mr. Farley described the project to the board.

Vice-Chair Driscoll discussed the requested variances for clarity and explained why the board needs more information regarding the whole project and side boundary.

Chair Crapo explained the board doesn't have enough information about what's there, what's approved, and what's not. He outlined the information the building inspector would need from the board in order to confirm what's approved or not. He concluded that the board doesn't have enough information to approve the application, nor does Mr. Marsden have enough to move forward, even if the board were to approve the addition.

Mr. Farley asked if he would need a drawing from his builder to show what the project looks like from every angle and then bring it to the board.

Vice-Chair Driscoll explained that they would need plans drawn of what would be encroaching into the sideyard setback as it all becomes part of the record.

**Motion by Shawn Crapo to continue the application by Ed Farley for property owned and located at 472 Wallis Road, Tax Map 16, Lot 77 to the November 1, 2023 meeting. Seconded by Chris Piela.**

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

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

Michael and Erin Horn presented the application to the board, noting that the pre-existing patio is about the same size as the hot tub and they have future plans to finish the basement. They explained that the plan is within the setback, but their coverage would increase to 17%, which they're requesting as the lot is relatively small compared with surrounding lots.

Chair Crapo explained that the request for a hot tub is called an "after-the-fact variance". He explained that the board is charged with looking at the application as if the hot tub weren't there; the board can't penalize the applicant because it's there, but if the board decides not to approve it, the cost of removing it is not supposed to come into play.

Mr. Horn explained that they're not trying to hide it, which is why they're seeking a permit for the deck.

Member Piela asked if the egress window would be there cut out of the basement if it would be considered a structure.

Vice-Chair Driscoll discussed the lot coverage and dimensions with Member Piela, who observed that it's better to have it and not need it than to need and not have it.

Vice-Chair Driscoll explained to the applicants that if they get approval, the time starts clicking and the variance will go away after two years. He encouraged them to be mindful of the time.

Mr. Horn explained that when they built the house, they knew that in order to make a bedroom they had to make an egress window. So when they did the foundation, they blocked it out and all they had to do was take a sledge to it to make a window.

Chair Crapo explained that the applicants are vested for two years with substantial completion. He also explained that the criteria for an extension is good cause.

Vice-Chair Driscoll noted that one of the denial items was the distance to the septic system. He asked the applicants if they had gone over that to make sure they were in good standing.

Mr. Horn explained that they took measurements: 34' from where the deck will be to the leach field and 20' to the tank. He distributed those measurements to the board.

Chair Crapo asked if the patio to the tank is 5' and whether that is too close to the tank.

Mr. Marsden explained that there's a 5' minimum.

Member Tuttle asked if the patio was going to be impervious, which Mr. Horn confirmed.

Member Tuttle wondered if the applicant needed the word "hot tub" in the application since the board is voting on the dimensions of the impervious surface.

Member Piela stated that the board is voting on lot coverage, not pervious ground ratio.

Member Tuttle explained that his question is related to the difficulty the board has historically had in finding hardship with applications including hot tubs. He suggested that these applicants could place whatever they wanted on top of the patio and suggested striking the word "hot tub" from the application if the applicants were agreeable. The applicants and the board agreed.

Chair Crapo opened to the public at 8:24 PM. Hearing no comment, the public session was closed.

Vice-Chair Driscoll stated that the application seems reasonable, nothing has been done out of ill will, they have done well with the application, and between looking at the site and the plans he has no issues with the application.

Member Chororos agreed that it's a fairly modest request, she understands the small size of the property and stated that they're not asking for anything outrageous.

Chair Crapo opened to the public at 8:25 PM, observing that the notice lists §190-2.3.C(5) for the patio, which is not lot coverage.

Member Piela stated that §190-2.3.C(5) is for building area and that the board is all good.

Planning/Zoning Administrator Reed stated that for single and general the wording is different, but it's still 5.

Chair Crapo stated that this lot has a weird triangle which, if it were squared off, would give more lot coverage. He observed that the project is within the setbacks, is far enough away from structures, is a reasonable expansion of the living area, and is not causing runoff issues. He stated that this lot, in this location, and the way it's set up makes it so the 2% extra impervious doesn't bother him as much as it would in some other areas in town where water and drainage are an issue. He stated that these are his reasons for voting yes on all the criteria.

Member Piela stated that it's a reasonable request to have a deck and patio on the back of the house and that the location is the most reasonable to put that type of structure.

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

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

**3. Substantial justice is done:**

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - 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?**

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - 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.**

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

**Motion by Patrick Driscoll to approve the application for property owned and located at 281 Wallis Road, Tax Map 19, Lot 13 for a variance from §190-2.3.C(5) for construction of a patio, a 15' x 20' deck, and an egress window equaling a lot coverage of 17% where 15% is allowed. Seconded by Chris Piela.**

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

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

**Tom Hammer**, a contractor, presented the application on behalf of the applicants. He explained that he was before the board for relief from the setbacks and described the property, which has special conditions including the shape of the lot. He explained that they're trying to minimize the



impact of the setbacks as much as possible and through this process, they had to get variances for the remodeling of the home, which was granted approval for relief. He explained that the client has decided to move forward with a garage and possible ADU, which would require dimensional relief for the structure.

Mr. Hammer described the neighborhood where many homes have been expanded, including 10 Huntervale Ave. He stated that the proposal is consistent with what is happening in the neighborhood. He explained that he's tried to push the garage back to have less of an impact on the home to the right and that many homes in the neighborhood are closer to the street due to the shape of the lot. He explained that this lot has two backyards as opposed to one and there are calculations on the plans where it would be 27.4'. He stated that the reason for the size of the garage is for an ADU expansion on the back of the garage allowing for an elderly person not to have to climb stairs. Mr. Hammer explained that he's gone to the Fire, Water, and Sewer Department who have approved the structure for an ADU. He stated that they're very close to the property line with the driveway, but it could be adjusted and changed from impervious to pervious and a net increase of lot coverage would be only 2%. Regarding water retention on the property, he explained that there would be a gutter system to a drainage structure.

Vice-Chair Driscoll asked if these plans show the proposed structure.

Mr. Hammer responded no, that's the existing home; they were trying to fast-track the existing home to minimize expenses when the idea of the ADU came into play.

Chair Crapo noted that the plan is the plan, and while Mr. Hammer said he'd change the driveway, noted that there's not a lot of room to finagle a turn.

Mr. Hammer explained that they're not looking for relief from coverage, only for height. He explained that the proposed building is 19.28 % but because of the pie-shaped house, it is already in the setback.

Member Chororos observed that the proposed ADU is part of the proposed garage and that an ADU requires its own two parking spots. She asked where they intend for parking to be. Mr. Hammer explained that parking would be in the garage and clarified that the homeowner would not have a garage space.

Mr. Hammer explained that they were granted relief for parking within the setback in their first application. Now, with the garage, they're adding two parking spaces that will be outside of the setback.

Member Chororos asked if the intention is to have two cars in the garage and two cars in the driveway.

Mr. Hammer asked if parking for one and a half cars is required for an ADU.

The board clarified that two parking spaces are required for each ADU.

Mr. Hammer explained that he got relief on his first application for two parking spaces.

Member Piela stated that it didn't matter, they could park there if it has a variance. He also stated that he's trying to understand the reason for the walkway in the side yard behind the garage.

Mr. Hammer clarified that it's water retention.

Chair Crapo explained that the walkway is in the driveway in the front.

Chair Crapo opened to the public at 8:38 PM.

Mr. Hammer stated that seven weeks ago he gave Planning/Zoning Administrator Reed a letter from an abutter who was in agreement with the project.

Vice-Chair Driscoll asked if any of the letters were from the most affected abutter.

Mr. Hammer stated that Kim Chase is the abutter to the right.

Vice-Chair Driscoll asked about abutters Binder and Sullivan.

Mr. Hammer stated that the three most affected are Binder, Sullivan, and Chase. He stated that he's spoken to Sullivan and Binder, but didn't have them sign.

Vice-Chair Driscoll stated that the major encroachment is on the rear yard setback, and while they're most affected, Mr. Hammer has spoken with them and they're not opposed. Mr. Hammer confirmed that they're not opposed.

Mr. Hammer explained that they'd like to make their intentions known: down the road, they'd like to have an ADU and they know what they're going to do with the space. He stated that this is not the ADU application, as that's a different board.

Chair Crapo clarified that the applicant, rather than having an empty garage with questionable space, is coming here first.

Mr. Hammer stated that he'd spoken to Mr. Marsden more than once when they submitted the original application and had to get dimensional relief.

Member Chororos expressed concern about the comment that the applicant might pull the driveway back.

Mr. Hammer explained that it's on the property line and it could potentially become tighter. He stated that it's currently 5' from the property line, but they'd like to make the turn wider.

Chair Crapo commented that it's a tight-knit neighborhood and that most people are in harmony.

Vice-Chair Driscoll agreed that there's been a lot of development there and that he was impressed by looking at the zoning and abutters in that neighborhood.

Chair Crapo noted that the property is shown in the application to be in the Aquifer Protection Overlay District, but still just within 400'.

Planning/Zoning Administrator Reed explained that they're in the lesser transmissivity and because it's a single residence they don't trip the requirements for a conditional use permit.

Chair Crapo closed the public session at 8:44 PM.

Chair Crapo asked members of the board if they felt the need to vote on parts of the application separately.

Member Chororos stated that there are some special conditions given the shape and limited size of the lot and the requests are not egregious but slight encroachments. She stated that it seemed like a fair ask.

Chair Crapo noted that there are multiple side setbacks because it's a circle lot, which is unusual.

Member Piela stated that voting on them together is fine.

Vice-Chair Driscoll agreed that voting together is okay. He proposed a condition that the pervious asphalt driveway and the infiltration trench be installed and maintained in accordance with the plans.

Chair Crapo opened to the public so that Vice-Chair Driscoll could discuss the proposed condition for a pervious maintenance plan with the applicant.

Chair Crapo stated that it's a unique neighborhood and the circle lot and the triangle shape in the rear of the lot dictate the setbacks. Considering the request and the way people in the

neighborhood use their properties, he felt comfortable voting in favor as it wouldn't negatively affect properties but enhance property values.

Member Piela agreed that it all makes sense and he appreciated the pervious driveway and infiltration trench to protect the lot and prevent runoff. He stated that he had no issues.

Vice-Chair Driscoll proposed verbiage for the condition: installation and maintenance as designed and shown on plans of infiltration trench and pervious driveway.

Chair Crapo agreed and added that it should be maintained to retain pervious features.

Chair Crapo stated that with that condition in mind, the board would go through the criteria.

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

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

**3. Substantial justice is done:**

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - 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?**

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - 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.**

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

**Motion by Patrick Driscoll to approve the variance request by Steve & Tara Danielson for property owned and located at 5 Douglas Circle, Tax Map 8.1, Lot 105 for variances from §190-2.4.C(2) for a garage 17.7' from the right property boundary and a walkway 12' +/- where 20' is required, from §190-2.4.C(2) for a garage 14.2' from the left side property boundary where 20' is required, from §190-11.1 for an expansion of the existing driveway within 10' of the right side boundary, and from §190-2.4.C(3) for a walkway 20'+/- from the front boundary where 30' is required with the one conditions of an installation and maintenance of driveway and infiltration trenches as designed and as shown on plans. Seconded by John Tuttle.**

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

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

Attorney Tim Phoenix and Kyra Higgins of TF Moran presented the application on behalf of the applicants. Attorney Phoenix explained that it's a 27,973-square-foot lot within the wetland buffer. He explained that there's a failing 150' retaining wall on the site, so TF Moran has designed a new one, measuring 173', to be placed in the same spot. Alluding to the RCC's letter dated June 12, 2023, he explained that the existing retaining wall is made of pressure-treated timber and is failing due to rot and is detached from the slope in places causing erosion. He stated that all would be removed and replaced with a 173' wall. He explained that the RCC has seen the site, that invasives will be removed, and that a planting plan has been submitted and they support the project. Attorney Phoenix outlined the RCC's recommendations and explained that the Batal's agreed to all recommendations.

Member Chororos stated that the board didn't have the RCC letter. Planning/Zoning Administrator Reed made copies and distributed them to the board.

Chair Crapo asked if there is anything in the RCC's conditions or restrictions that the applicants don't agree with or that needs modification.

Attorney Phoenix explained that the applicant is willing to live with all of the conditions. He also discussed why it needs to be replaced in this location and stated that they're in the process of getting DES permits.

Ms. Higgins explained that DES responded on July 20, 2023, with approval and that she brought copies of that approval for the board.

Attorney Phoenix explained that they had been waiting for the RCC.

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

Chair Crapo asked if there had been any input from abutters. Attorney Phoenix stated that there had not been.

Ms. Higgins explained that TF Moran sent abutter letters by certified mail and did get a response from abutter Jenna Gregg as the temporary impact (silt sock) will be within 10' of the property line and they needed to obtain written consent. She stated that they sent a letter via certified mail to the other abutter and haven't heard anything, but didn't need to seek 10' for that side of the property.

Member Chororos asked what type of equipment is needed to complete the project.

Attorney Phoenix explained that RCC says a small excavator is recommended and there's no need to go into the marsh or buffer and they would excavate from the high property side.

Ms. Higgins explained that it's a high-functioning salt marsh, so the RCC wanted confirmation that they'd stage equipment and remove existing timbers from the upland.

Member Piela noted that the DES permit had many conditions and asked if that was all set. Ms. Higgins responded, yes.

Chair Crapo opened to the public at 9:08 PM.

**Karen Oliver** stated that the RCC letter covers it all and she wasn't at the site walk.

Chair Crapo explained that he'd like to generally consider DES conditions, not necessarily from the July 20, 2023 letter.

Vice-Chair Driscoll noted that DES would need to approve it too and suggested that the board leave them out. He explained that DES has recommendations in the body of their July 12, 2023 letter that aren't in bullet points.

Chair Crapo stated that the board has one multi-letter section of a variance, but it's one variance. He closed to the public at 9:10 PM.

Member Chororos stated that this project improves the existing conditions by replacing a failing retaining wall. It doesn't violate the ordinance's basic objectives, doesn't alter the essential character of the locality, and doesn't threaten public safety or welfare unless it fails that would result in damage to the home and to surrounding wetlands, so it's not going to diminish surrounding property values but would enhance them with the replacement of a failing retaining wall.

Member Piela noted that there are special conditions as it's all in the wetland.

Chair Crapo stated that there's already a home there, so in order to maintain that home and not cause it to dilapidate and lessen property values, cause damage to the marsh, etc., this is a reasonable step. He noted that there are conditions attached so they'll have to be responsible with construction methods and it would result in a quality product that will maintain and improve the environmental situation. He explained if they were proposing a new house and this retaining wall was needed to do that, it would be a whole different discussion.

Vice-Chair Driscoll explained that any concerns he'd had about granting the requirements were addressed well in the RCC letter that will be a condition to the approval and that satisfies his concerns regarding substantial justice, enforcement, and special conditions.

Chair Crapo stated that between DES and RCC, there are enough protections in place that the board knows it's not going to be done in a haphazard way.

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

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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



Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

**3. Substantial justice is done:**

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - 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?**

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - 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.**

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

**Motion by Patrick Driscoll to approve the variance request for property owned and located at 94 Harbor Road, Tax Map 9.2, Lot 6 for a variance from §190-3.1.H.(2)(a),(c), (g) to permit temporary and permanent surface alterations for the removal of the existing retaining wall and replace it with a longer one with the one condition that they adhere to the Conservation Commission's recommendations in their July 12, 2023 letter. Seconded by Chris Piela.**

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

**6. Brenda Dale for property owned and located at 630 Washington Road, Tax Map 11, Lot 78 requests variances from §190-2.2.D(1) for two dwellings on one lot temporarily and from §190-2.3.C(7) for height where 35' is allowed and 36.76' is being requested. Property is in the Single Residence and the Aquifer/Wellhead Protection Overlay. Case #44-2023.**

**Attorney Tim Phoenix** presented the application to the board on behalf of the applicants and introduced **Eric Weinrieb** of Atlas Engineering, who conducted the technical work, **Bob Dale**, and members of his family, who were also present.

Attorney Phoenix explained that the property is on a 72,681-square-foot lot with 1.67 acres through the Aquifer & Wellhead District. He described the lot's features, including the ancient septic system and greenhouse. He explained that the property has been the Rye Ridge Greenery for the past 60 years and the lot was a mess with debris, fertilizer, and chemicals that have since been cleaned up, which is a benefit to the town and to the neighbors. He explained that four adults and two dogs live on the property, which is the reason for the request; the applicants want to build a 5-bedroom home with an ADU. They would like to reside in the small home until the other home is built then demolish it as a condition of moving in. They would also like to keep the existing garage and greenhouse for personal use; the driveway will be removed when the new driveway is installed.

Mr. Weinrieb discussed the technical details and explained that they did a full existing conditions survey on the site, delineated wetlands, and provided a 75' buffer to the wetland. He stated that they're not going anywhere in the wetland buffer. He explained that the existing house is in the front yard setback and that they're proposing a new, steep driveway down to the garage as well as a flat apron, house, and ADU. He explained that the challenge is the elevation of the street and the existing grade in front of the house. He stated that they're 20' below the street line and looking to make the grade balanced. The finished peak of the roof is 15' above street level. They already have a septic system approved for the lot and a detailed stormwater management plan to deal with the steep grades, slopes, and runoff.

Chair Crapo stated that the board is very used to grading on smaller lots and asked for an average of the whole lot.

Mr. Weinrieb stated that they developed an average grade of 55.4.

Chair Crapo asked **Chuck Marsden**, the Town Building Inspector, if he was aware of what's being used as a benchmark for grade and if he was in agreement.

Mr. Marsden stated yes, they got it right.

Mr. Dale explained that it's not a tall house and it's more an effect of the lot they're dealing with.

Chair Crapo asked for the ceiling heights.

Mr. Dale stated that the first floor has a 9' ceiling and the eave line is 6' on the second floor.

Vice-Chair Driscoll noted that there are windows in the attic space and asked if it was an unfinished space, which Mr. Weinrieb confirmed.

Member Tuttle asked if it was an ADU or a second unit on the property.

Attorney Phoenix stated that the new construction is an ADU, but the family is asking to be able to live in the existing house. There would temporarily be two dwelling structures on the lot until they get the house built.

Chair Crapo recalled an application with a similar request where the applicant had to submit estimates to the building department for the cost of demolition of the temporary unit and then take out a bond that would back up the town in the event that that removal did not occur in the proper timely fashion.

Attorney Phoenix stated that Mr. Daly would be amenable to that as a condition. He stated that the primary relief is for the height variance shown by the architect as 36.76' where 35' is the limit. He expressed that if it's less than 2' and over it's over 100' from the road at a much lower starting elevation, nobody will know the actual height from the finished grade is 30', 10".

Attorney Phoenix stressed that it would be temporary and that the driving factor is primarily the ability of four people and two dogs to find a place to stay while construction is happening. He also noted that if the board were to grant a temporary variance for the house, the lot coverage would temporarily be over the limit. He distributed and described the plan to the board.

Chair Crapo asked if the parking area would revert to lawn, which Attorney Phoenix confirmed.

Chair Crapo stated that he'd like to speak to Mr. Marsden about coverage and also asked about the wording of the red text at the top of the plan which states, "existing house to remain as homeowners' residence until an ADU is occupied. Existing house to be razed immediately upon homeowner taking occupancy of the new primary residence." He asked if all of this is contingent upon the ADU getting approved by the Planning Board and whether the family would move into the ADU and then to the main house.

Attorney Phoenix clarified that the text means until the new home is occupied.

Mr. Weinrieb stated that they would get a Certificate of Occupancy on the main part of the house, then get the ADU, and then everyone would move in. He stated they have no objection to a condition that's more clean.

Chair Crapo, speaking to Mr. Marsden, explained his understanding that the town's policy is not to issue temporary COs. He observed that it seems like this would need a temporary CO in order for a family to move into the new structure and allow enough time to fill the other. He asked if that would be allowed and if that's the current policy, would the board be able to vary that to allow this proposal to happen.

Mr. Marsden explained that this application is unique and explained why temporary COs can be difficult to manage and have the potential to be precedent-setting while noting that the Building Department would try to move forward with whatever the board decides.

Attorney Phoenix noted that with a bond in place, the town would have assurance. He observed that a CO is usually backed up with a deadline.

Chair Crapo explained that a final CO means everything is complete and you need new construction to be signed off.

Chair Driscoll stated that the driveway would have to be completed and that's running through the house that's being demolished.

Mr. Weinreib noted that while the Building Department likes for all landscaping to be complete, there would be aspects that can't be completed.

Chair Crapo asked about the project timeline.

**Robert Dale** of 630 Washington Road, the applicant, stated that he would accept a condition that the house has to come down as a requirement for the variance.

The board discussed a temporary CO and the timeline for the work.

Vice-Chair Driscoll stated that he doesn't want to put the decision on Mr. Marsden. He stated that he disagrees with not allowing temporary COs, but if Mr. Marsden is going to stand by that, he needs to have something on paper to rely on stating that the ZBA placed the requirement.

Mr. Marsden stated that this is a unique situation while noting that it also sets a precedent. He discussed the challenges involved in issuing temporary COs and stated that conditions of approval by the Zoning or Planning Board cannot be overwritten by a temporary CO and advised the board to be careful in the way they word things.

Chair Crapo asked if the final occupancy CO has to be in place before the applicant can move in.

Mr. Marsden explained that there is a final inspection and even if it's a partial list of things to be completed, people can start to move things in.

The board discussed Mr. Marsden and the Building Department's processes for issuing a final inspection and CO.

Mr. Marsden stated that if it comes down to a condition that the house must be removed before a CO or a temporary CO is issued, that's a workable outcome.

Chair Crapo, Vice-Chair Driscoll, and Mr. Marsden discussed how the board would effectuate two structures on the lot temporarily.

Member Chororos asked about the removal of the home and whether there is concern about stormwater on the property related to the change in grade.

Mr. Weinrieb stated that he has proposed grading on the plan which shows what contours would look like once the house is removed. He stated they reshaped the area to allow stormwater to flow in the proposed manner. He stated that the removal of the house, the foundation, and the reshaping of the area were all considered.

Mr. Marsden suggested that a condition of approval could be for the permanent certificate of occupancy, as built, to reflect the approved site plan at the Zoning Board meeting.

Attorney Phoenix stated that Mr. Dale would be willing to have a bond that requires both the removal of the house and any unfinished exterior requirement.

Chair Crapo asked if the application must go before the Demolition Committee and if so, if they have met with them.

Attorney Phoenix stated that they haven't been before the Demolition Committee, but all they can do is hold it out for 30 days.

Mr. Marsden stated that when you get approval for demolition it doesn't matter when you tear it down, not until the permit is issued.

Attorney Phoenix discussed the variance criteria as they relate to this application.

Chair Crapo explained in the event that the board approves the application, they may not have an NOD out right away; they may need to delay or continue that to allow time for town counsel to work with the applicant on the language of the bond and find someone who will issue the bond.

Attorney Phoenix explained that the applicant is not planning to build anything until next summer.

The applicant agreed to the potential for delay.

Chair Crapo opened to the public at 9:57 PM.

Member Tuttle asked Attorney Phoenix if they're applying for the ADU through the Planning Board.

Attorney Phoenix stated that they haven't yet, but they will.

Chair Crapo explained what could happen if the applicant weren't granted an ADU. He explained that in order to use some of the proposed features, they'd need to apply for a variance to have a second kitchen.

Member Tuttle pointed out a patio area in the wetland buffer and asked if it was preexisting.

Mr. Weinrieb stated that there is no patio. He explained that a lot of the yard debris has been removed based on the existing conditions plan and that the patio area does not exist and is not intended to exist.

Vice-Chair Driscoll explained that his concerns are alleviated with the bond. He outlined three items to consider for proposed conditions: a temporary occupancy, life safety, and all egress points are to code; within 90 days of the temporary occupancy, the existing home will be removed and graded to plans; only one building on the lot can be occupied at any given time.

Attorney Phoenix agreed.

Mr. Marsden proposed another condition that all conditions of approval as submitted, reviewed, and approved at the BOA meeting must be met prior to the issuance of a final Certificate of Occupancy and the temporary CO will have a deadline of 90 days.

Member Chororos requested that the notes be removed from the plans as they're confusing.

Chair Crapo clarified that the applicant will bring the new plan to Planning/Zoning Administrator Reed, to Mr. Marsden for proposed, then do an as-built plan.

Member Tuttle asked if a condition should be included for the pervious patio area.

Mr. Weinrieb responded that either way it's still under the coverage.

Chair Crapo stated that language is needed to address the demolition of the existing structure which is subject to the bond, paid for by the applicant, and approved by the town. He stated that's a condition and they can flush out the final language in a form approved by the town

council. He stated that the final NOD may need to be delayed so that town counsel can wordsmith the language.

Chair Crapo closed the public session at 10:09 PM.

**Motion by John Tuttle to continue applications 7. Ocean Mustang Trust & Viking Realty Trust, Donna M. Miller; 9. Kate D'Appoloina; 10. Seacoast Apart-Hotels LLC; 12. Robin Wehbe to the October 4, 2023 meeting. Seconded by Chris Piela.**

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

Chair Crapo called for a vote on the requested variances from §190-2.2.D(1) for two dwellings on one lot temporarily and from §190-2.3.C(7) for height where 35' is allowed and 36.76' is being requested.

Vice-Chair Driscoll clarified the proposed conditions:

1. Temporary occupancy will be issued after successful final inspection of the Structure.
2. Only one building on the lot shall be occupied at any given time.
3. All conditions of approval as submitted and approved by the Board of Adjustment at the 9/6/2023 meeting be met prior to issuance of final Certificate of Occupancy no more than 90 days from temporary CO.
4. Demolition of existing structure subject to a bond agreed to by the applicant and the Town of Rye and adhered to by applicant.

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

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, because a new, code-compliant home that's further from the street that provides safer entrance to the lot, improving the septic system, and taking better care of the lot and wetlands buffer is a benefit to the public.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as far as granting use of the two temporary structures, there's no negative impact on the neighborhood, people were already living in that house, it's not putting any residency closer to anybody in a negative effect, and it achieves the overall goal of a house farther sited from the road, it's more in keeping with all the setbacks, and the rest of the zoning regulations.

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



Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, because the height itself is based upon the average size of the building, which is only 30', 10". Also the house is so far off the road, nobody is going to see this as a 36' structure, only 15' would be visible from the road.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

**3. Substantial justice is done:**

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, because this is a better house location for the town in general, the abutters, the property owner, and the conservation of the town's resources.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - A new, code-compliant home would only increase the surrounding property values.

Shawn Crapo - Yes, as stated.

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

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, the slope is 33'.

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.**

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, because the general purpose is not to have an opposing structure on the street that's going to look uniquely tall, in this case, the property will be lower than street-level.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, whether or not there's an ADU doesn't change the case that it's reasonable.

Chris Piela - Yes, it's a single-family structure on a lot.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, it's a large enough lot, with the proposed structure and the ADU, and due to the uniqueness of the topography, the streetscape is not going to be negatively affected, it's going to be improved. Also, this was already not in conforming use, so it's reasonable.

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

Sandra Chororos - Yes, as stated.

Patrick Driscoll - Yes, as stated.

Chris Piela - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

**Motion by Patrick Driscoll to approve the variance request for property owned and located at 630 Washington Road, Tax Map 11, Lot 78 for variances from §190-2.2.D(1) for two dwellings on one lot temporarily and from §190-2.3.C(7) for height where 35' is allowed and 36.76' is being proposed. The conditions for this application include:**

1. Temporary occupancy will be issued after successful final inspection of the Structure.
2. Only one building on the lot shall be occupied at any given time.
3. All conditions of approval as submitted and approved by the Board of Adjustment at the 9/6/2023 meeting be met prior to issuance of final Certificate of Occupancy no more than 90 days from temporary CO.

4. Demolition of existing structure subject to a bond agreed to by the applicant and the Town of Rye and adhered to by applicant.

Chair Crapo stated that the Notice of Decision will be delayed until language can be agreed upon and upon that Notice of Decision, the bond can be issued.

**Seconded by Chris Piela.**

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

Motion by Patrick Driscoll to adjourn at 10:23 PM. Seconded by Chris Piela. All in favor.

Respectfully Submitted,  
Emilie Durgin

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/Owner:**

Enos General Contracting

**Property:**

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

**Application case:**

Case #36-2023

**Date of decision:**

September 6 2023

**Decision:**

The Board voted 5-0-0 to grant the following conditions from the Rye Zoning Ordinance as presented and advertised because special conditions of the property, not contrary to the spirit of the ordinance nor to the public interest, increases the values, separation of boundary lines, great deal of frontage and this makes the garage vastly more conforming.

1. §190-2.3.C(2) for a garage 4.3' from the side boundary.
2. §190-5.0.C/19011.1 for a driveway 2' +/- from the side boundary

  
Shawn Crapo, Chair

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

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/Owner:** Marcie Michaud

**Property:** 65 Big Rock Road, Tax Map 5.2, Lot 59  
Property is in the General Residence and Coastal Overlay Districts.

**Application case:** Case #46-2023

**Date of decision:** September 6, 2023

**Decision:** The Board voted to continue the application to the October 4, 2023 meeting.

  
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:** Kathy & Timothy Keane

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

**Application case:** Case #49-2023

**Date of decision:** September 6, 2023

**Decision:** The Board voted to continue the application to the October 4, 2023 meeting.

  
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:

September 6, 2023

Decision:

The Board voted unanimously to continue the application to the November 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.

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/Owner:**

Erin and Michael Horn

**Property:**

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

**Application case:**

Case #41-2023

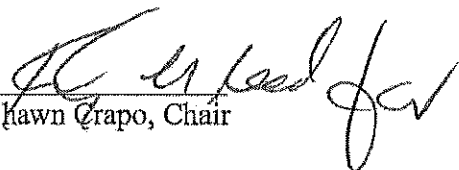
**Date of decision:**

September 6, 2023

**Decision:**

The Board voted unanimously to grant the following variance from the Rye Zoning Ordinance as presented and advertised because uniqueness of the lot drives coverage, extra 2% not a concern, reasonable and modest request.

1. §190-2.3.C(5) for construction of a patio a 15' x 20' deck, and an egress window equaling a lot coverage of 17%.

  
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:**

Steve & Tara Danielson

**Property:**

5 Douglas Circle, Tax Map 8.1, Lot 105

Property is in the General Residence District & Aquifer Protection Overlay District

**Application case:**

Case #42-2023

**Date of decision:**

September 6, 2023

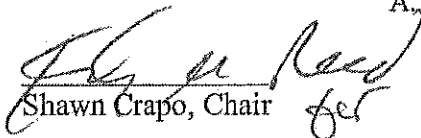
**Decision:**

The Board unanimously voted to approve the variances from the Rye Zoning Ordinance as presented and advertised because the pie shape lot is a special condition, fair ask, tight neighborhood,

1. §190-2.4.C(2) for a garage 17.7' and a walkway 12 +/- from the right side boundary.
2. §190-2.4.C(2) for a garage 14.2' from the left side boundary.
3. §190-11.1 driveway within 10' of the right side boundary.
4. §190-2.4.C(3) for a walkway 20+/- from the front boundary.

The above variances were granted with the following condition.

A. That the pervious pavers to be installed and maintained to remain pervious.

  
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:**

Robert S. Batal

**Property:**

94 Harbor Road, Tax Map 9.2, Lot 6

Property is in the Single Residence District & Coastal Overlay District

**Application case:**

Case #43-2023

**Date of decision:**

September 6, 2023

**Decision:**

The Board voted unanimously to grant the variance by the Rye Zoning Ordinance as presented and presented because special conditions of the project and lot, does not diminish property values, enhances the lot and a reasonable one to property to protect the existing home:

1. §190-3.1.H.(2)(a),(c), (g) to permit temporary and permanent surface alterations for the removal of the existing retaining wall and replace it with a longer one.

The above variance was granted with the condition that the applicant adheres to the Rye Conservation Commission (RCC) letter dated July 12, 2023.

  
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.

## NOTICE OF DECISION AND FINDINGS OF FACT

**APPLICANT:** Robert and Brenda Dale

**PROPERTY:** 630 Washington Road, Tax Map 11, Lot 78

**ZONE:** Single Residence District & Coastal Overlay District

**CASE NO:** #44-2023

**DATE OF DECISION:** September 6, 2023

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The Rye Zoning Board of Adjustment issues this Notice of Decision and Findings of Fact in accordance with RSA 676:3. In issuing this Notice of Decision and these Findings of Fact, the Zoning Board of Adjustment incorporates such facts and evidence as are reflected in the submittals and meeting minutes associated with this matter that are supportive of the decisions and Findings of Fact contained herein.

### **FACTUAL FINDINGS:**

1. The Property is located at 630 Washington Road, Tax Map 11, Lot 78 ("the Property").
2. The Property is owned by Robert and Brenda Dale ("the Applicants").
3. The Property is located in the Single Residence District & Coastal Overlay District.
4. The Property is a 72,681 square-foot, rectangular lot with 177' frontage on Washington Road.
5. The Property is approximately 420 feet deep.
6. The topography of the Property is such that the elevation at of the Property declines from an elevation of 72' at the front of the Property to approximately 44' at the Property's rear.
7. The grade is steepest toward the front of the Property where the elevation decreases by approximately 25' over a distance of approximately 200', whereupon the slope becomes more gradual extending toward the rear of the Property.
8. The Property contains a wetland in the rear, southeast quadrant of the Property.
9. The Property is presently improved by a 910 square foot home with a covered porch, a one-car garage, and a greenhouse ("Existing Residence").
10. There is an existing driveway that leads to the Existing Residence along the easterly lot line of the Property.
11. The Property is served by public water and a dated septic system of unknown age.
12. The Applicants seek to construct a five-bedroom single family residence, with a garage and an attached two-bedroom accessory dwelling unit.

13. The Applicants propose to retain the Existing Residence on the Property during the construction of the single-family residence. Upon the completion of the single-family residence, the Applicants propose to discontinue the use of the Existing Residence.
14. Upon completion of the single-family residence and the attached accessory dwelling unit, the Applicants propose to raze the Existing Residence.
15. As part of the construction of the proposed single-family residence, the Applicants propose to construct a new driveway located to the west of the Existing Residence. That driveway would be discontinued upon the razing of the Existing Residence.
16. In support of the Application, the Applicants submitted a plan set titled, "Project Single Family Residence, 630 Washington Road, Rye, New Hampshire 03870," prepared by Altus Engineering and initially dated April 11, 2023 (last revised May 16, 2023) ("**the Altus Plans**"). Said plans include a Site Plan, an Interim Site and Stormwater Management Plan, and an Average Ground Elevation.
17. Also in support of the Application, the Applicants submitted architectural plans prepared by O'Sullivan Architects, Inc. and dated March 21, 2023 ("**Architectural Plans**"). Said Architectural Plans contain Sheets A1, A4, and A5.
18. The Property has received an Approval for Construction of Individual Sewage Disposal System ("**ISDS**") from the Department of Environmental Services ("**DES**") for an Enviro-Septic Leaching System.
19. The Applicant proposes to control stormwater runoff by and through the use of an erosion and sedimentation controls and the use of a stone drip edge along the proposed residence and ADU, together with perimeter drains. Such stormwater management is reflected in the Interim Site and Stormwater Management Plan.
20. The bioretention basin is designed to collect water from the wetland on the Property and runoff entering from Surf Lane.
21. The Applicants proposal requires the following variance relief:
  - a. From §190-2.2.D(1) for placing two dwellings on one lot on a temporary basis and
  - b. From §190-2.3.C(7) to allow for the height of the single-family residence to have a height of 36.76'.
22. Subject to the conditions set forth below, the Zoning Board of Adjustment grants the Applicants' Application for a Variance related to §190-2.2.D(1) for the following reasons:
  - a. The grant is not contrary to the public interest because the existence of the non-compliant condition, two detached single residential dwelling structures, is proposed to be of a temporary nature to facilitate the construction of a new single-family residence with an upgraded, state-of-the-art septic system.
  - b. The spirit of the ordinance is observed by the grant of a variance because the Applicants' proposal is of a temporary nature to allow for the construction of a residence the driveway, septic system, and stormwater management for which are more consistent with the underlying purpose of the ordinance.
  - c. Substantial justice would not be done by the grant of the variance because the public would not benefit from the denial of the variance and the denial of the variance would be detrimental to the Applicants as it would require the Applicants to have to move off and rent temporary housing at high rental amounts.
  - d. Property values would not be diminished because the variance sought is for a limited duration in time and the non-compliant use would be discontinued upon the construction of the proposed residence.

- e. There are special conditions of the Property that distinguish it from other properties in the area as the lot is improved with an aged single-family residence that is significantly smaller than surrounding lots and the topography for which prevents the expansion or redevelopment of the Property without significant additional site work toward the front of the Property.
- f. 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 because the proposed variance is for a limited use and to be exist for a limited period of time, and the non-compliant condition will be eliminated shortly.
- g. The proposed use is reasonable in light of the Applicants proposal to construct a residence with a compliant stormwater management system and improved septic system and given the temporary nature of the variance sought.
- h. The literal enforcement of the Zoning Ordinance would result in an unnecessary hardship because the denial of the variance will preclude the use of the Existing Residence during construction and would require the Applicants to temporarily rent alternative lodging during construction.

**23.** Subject to the conditions set forth below, the Zoning Board of Adjustment grants the Applicants' Application for a Variance related to §190-2.3.C(7) for the following reasons:

- a. The grant is not contrary to the public interest because the grant of the variance will not alter the essential character of the neighborhood or adversely impact public health and safety. Further the height of the structure will not be prominently noticeable to abutters as the proposed structure is setback from the road by approximately 100 feet and the topography will conceal any exceedance of the height limitation.
- b. The spirit of the ordinance is observed by the grant of a variance because height restrictions exist to maintain viewsheds, ensure adequate access to air and light, and prevent visible obstruction and such purposes are served in this instance. The proposed structure is anticipated to be set back from the property line and the topography will make conceal the height exceedance.
- c. Substantial justice would not be done by the grant of the variance because the public would not benefit from the denial of the variance in a manner that outweighs any detriment to the Applicants in the denial of the variance.
- d. Property values would not be diminished, and instead will be improved, because the height exceedance is only anticipated to be 1.76' and the Property will be improved with a more-compliant home.
- e. There are special conditions of the Property that distinguish it from other properties in the area as the lot is improved with an aged single-family residence that is significantly smaller than surrounding lots and the topography alters the averaged finished grade in a manner that impacts height calculations under the Zoning Ordinance.
- f. 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 because the proposed variance is for a limited exceedance from the height limitation, which is due to the Property's sloping topography, and the limited exceedance will not be readily observable from neighboring properties or the public right-of-way.
- g. The proposed use is reasonable in light of the Applicants' proposal to construct a residence with a compliant stormwater management system and improved septic system and given the limited nature of the variance sought.

- h. The literal enforcement of the Zoning Ordinance would result in an unnecessary hardship because the denial of the variance will preclude a reasonable use of the Property that would involve improved stormwater management and an updated state-of-the art septic system. .

24. The variances granted herein are subject to the following conditions:

- a. Temporary occupancy will be issued after successful inspection of the structure.
- b. Only one building on the lot shall be occupied at any given time.
- c. All conditions of approval as submitted and approved by the Board of Adjustment at the 9/6/2023 meeting be met prior to issuance of final Certificate of Occupancy no more than 90 days from temporary CO.
- d. Demolition of existing structures subject to a bond agreed to by applicant and Town of Rye and adhered to by applicant.

Any party aggrieved by this decision has the right to submit a Request for Rehearing with respect to this Board's decision. Any request for rehearing must be submitted within thirty (30) days of the date of the hearing at which the Board voted to take the action set forth herein. Such request for rehearing must identify the reasons for which you assert that the Board's decision is unlawful and unreasonable.

Dated September 17, 2023

Signed: \_\_\_\_\_

Shawn Crapo, Chair

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

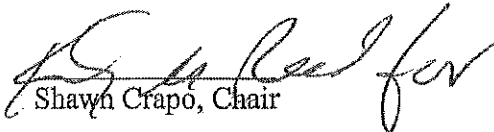
**Applicant/Owner:** Robin Wehbe, Common Roots Cafe

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

**Application case:** Case #50-2023

**Date of decision:** September 6, 2023

**Decision:** The Board voted to continue the application to the October 4, 2023 meeting.

  
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:

Kate D'Appoloina

Property:

11 Ham Lane, Tax Map 10, Lot 64  
Property is in the Single Residence District.

Application case:

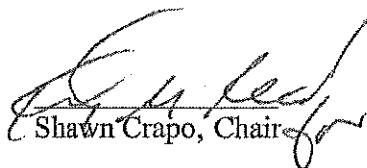
Case #47-2023

Date of decision:

September 6, 2023

Decision:

The Board voted to continue the application to the October 4, 2023 meeting.

  
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:** 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 #48-2023

**Date of decision:** September 6, 2023

**Decision:** The Board voted to continue the application to the October 4, 2023 meeting.

  
(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

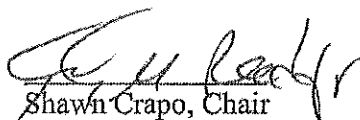
**Applicant/Owner:** Ocean Mustang Trust & Viking Realty Trust, Donna M. Miller, Trustee

**Property:** 1264-1266 Ocean Blvd, Tax Map 17.3, Lots 55 & 57  
Property is in the General Residence and Coastal Overlay Districts, SFHA Zone AO (3) and VE (20).

**Application case:** Case #45-2023

**Date of decision:** September 6, 2023

**Decision:** The Board voted to continue the application to the October 4, 2023 meeting.

  
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.