

TOWN OF RYE – BOARD OF ADJUSTMENT

**Wednesday, May 1, 2024
7:00 p.m. – Rye Town Hall**

***Members Present:* John Mitchell, Rob Patten, 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. NEW BUSINESS

Continuances

Motion by Rob Patten to continue the application by Victory Bastable for property owned and located at 50 Brackett Road to the June 5, 2024 meeting. Seconded by John Tuttle.

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

Motion by John Tuttle to continue and renote the application by Ed Farley for property owned and located at 472 Wallis Road to the November 6, 2024 meeting. Seconded by Sandra Chororos.

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

Approval of Minutes - March 6, 2024

Motion by John Tuttle to accept the March 6, 2024 meeting minutes as submitted. Seconded by Rob Patten.

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

Approval of Minutes - April 3, 2024

Motion by John Tuttle to accept the April 3, 2024 meeting minutes as submitted. Seconded by Sandra Chororos.

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

III. APPLICATIONS

1. **Michael Anderson** for property owned and located at 117 Washington Road, Tax Map 17, Lot 20 requests variances from §190-6.3B to raze an existing shed and replace with new; from §190-3.1.H.(1)(a) to replace an existing shed 53'+/- from the fresh pond where 100' is required. Property is in the Single Residence District. Case #57-2023.

Patty Anderson presented updates to the application, noting that the board had questions regarding distances to the buffer. She explained that she intended to replace the existing slab and build in the same location, but the RCC and the board preferred otherwise. As a result, the shed was relocated and is now 60', 4" and 56' away from the delineation.

Member Chororos asked if the RCC's numbers, 56' from Flag A and 60', 4" are correct. Ms. Anderson confirmed.

Ms. Anderson noted that the overhang is now included to address Chair Crapo's question regarding the drip edge.

Member Patten asked if the concrete slab would remain, whether the new shed would have a concrete slab, and whether it would be parallel to the existing slab; Ms. Anderson confirmed. Member Patten stated that if they're parallel then the presented measurements are acceptable to him. The applicants provided all the information the board had requested including overhangs and precise measurements.

Member Chororos asked for clarification that the structure would include electricity and a wood stove, but not water; Ms. Anderson confirmed.

Ms. Anderson stated that she'd like to clarify misinformation by the RCC in their 11/20/23 letter which stated that all materials on top of the existing slab must be removed from the 75' buffer, per the code enforcement officer. Ms. Anderson stated that the code enforcement officer never said anything to her about the removal of materials and Chair Crapo's comment at the previous meeting was the first she'd heard of it. She went to the code enforcement office, where it was explained that she would have received notice about such a request, which she did not.

Chair Crapo suggested that the RCC's concern was regarding oil, gas, or chemicals that could get into the wetlands. He noted that the RCC's 2/29 recommended that yard waste be removed.

Ms. Anderson clarified that three trees had fallen in the area, which is part of the forest and it wouldn't be an issue to remove the dead branches. She reiterated her point: she was told that a code enforcement asked her to take action which was not the case.

Jeff Gardner, RCC Alternate Member, stated that he wasn't on the site walk, but noted the letter says "yard waste" and wondered if it's referring to yard waste in the buffer. Ms. Anderson stated that there was no yard waste in the buffer, but some trees had fallen.

Chair Crapo closed to the public at 7:20 PM.

Member Patten stated that the recommendation in the RCC letter is too nebulous to support conditioning the application on it.

Chair Crapo stated that the Andersons have been before the board before, that he doesn't have any concerns about their stewardship of the land, and that they've said they'll take care of the dead branches.

Member Chororos asked the applicant what they intended to do with the existing slab. Ms. Anderson stated that they'd leave it and to remove it would be a huge disturbance as there is not only slab, but also footing underneath. She stated that the three fallen trees are in the location of the new slab and would need to be removed anyway.

Chair Crapo reclosed to the public at 7:23 PM.

Member Tuttle expressed no concerns but wondered whether a variance from §190-6.3B is needed as the applicant is leaving the structure as is. The board discussed their request: Chair Crapo noted that the shed is a new structure and that the minutes show that the current pad will remain. He also noted that voting on the application as presented would take care of shrubs and anything else presented in the RCC letter.

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

John Mitchell - Yes.

Rob Patten - Yes, it doesn't alter the essential character of the neighborhood and it doesn't threaten public health, safety, or welfare.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

2. The spirit of the ordinance is observed:

John Mitchell - Yes.

Rob Patten - Yes, it doesn't alter the essential character of the neighborhood nor does it doesn't threaten public health, safety, or welfare.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

3. Substantial justice is done:

John Mitchell - Yes.

Rob Patten - Yes, denial would create a greater loss to the applicant than any potential gain to the public.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

4. The values of surrounding properties are not diminished:

John Mitchell - Yes.

Rob Patten - Yes, there's been no testimony that values of surrounding properties would be diminished and I can't personally see why that would be the case.

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?

John Mitchell - Yes.

Rob Patten - Yes, there's a wetland running through the center of the property.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, it's a wet property and a very large parcel.

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.

John Mitchell - Yes.

Rob Patten - Yes, if we were to apply the ordinance literally it would not serve the purpose of the ordinance.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes.

Shawn Crapo - Yes, as stated.

7. The proposed use is a reasonable one.

John Mitchell - Yes.

Rob Patten - Yes, replacing an old shed with a new shed is reasonable.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, having a shed to keep things out of the elements and to protect the resource is reasonable.

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

John Mitchell - Yes.

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

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

Shawn Crapo - Yes, as stated.

Motion by John Tuttle to approve the application by Michael Anderson for property owned and located at 117 Washington Road, Tax Map 17, Lot 20 as advertised and presented. Seconded by Sandra Chororos.

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

- 2. 444 Owls Revocable Trust for property owned and located at 154 Washington Road, Tax Map 17, Lot 15 requests variance from §190-2.3.C(5) for lot coverage of 21.5% where 15% is allowed. Property is in the Single Residence District. Case # 62-2023.**

Attorney Monica Kieser of Hoefle, Phoenix, Gormley & Roberts presented the application on behalf of the applicants with **Bruce Scamman** of Emanuel Engineering and **Lexi Leddy**, trustee of 444 Owls Revocable Trust.

Attorney Kieser stated that in February coverage relief of 23.8% was requested where 15% is allowed. She also requested waivers for the building permit and septic system's distance to ledge and the estimated seasonal high water table. She recalled the board's questions regarding the septic system and verification of the wetlands' location, which are off the lot on the property behind it. She stated that Mr. Scamman's firm didn't design the initial septic system and they took time to find answers to the board's questions and find ways to reduce the coverage request.

Chair Crapo invited Ms. Maher, an abutter, to view the proposed plans.

Attorney Kieser stated that there was coordination with the Mahers regarding the wetland delineation. She stated that the Mahers know the septic system would be moved farther away from their property. The septic was previously in a compliant location but the depth to ledge and seasonal high water was not as good. She stated that they met with the previous designer and decided on a new location for the septic. The new system is proposed to be in the middle of the circular driveway which is compliant with the distance from the front and side lot lines, is 4' from seasonal high water, and 6' from ledge. For this reason, no building code relief is being requested.

Attorney Kieser pointed to the delineated wetland located on the Maher's lot and explained that the distance between the wetland and the proposed project is well outside of the 75' buffer. She explained that the addition includes a two-bay garage with living space above. Impervious coverage will be added in some places and removed in others, which is new to the proposal. One area is to be converted to porous pavers and stormwater infiltration will occur due to the permeability, this will be connected to a drain line. She stated that today the lot has 21.5% coverage and they're proposing 21.5% coverage.

Chair Crapo asked if the septic system counts as pervious coverage. Mr. Scamman confirmed that it would be pervious coverage as there is grass on top.

Mr. Scamman explained that the proposal includes a full stormwater management plan and stormwater analysis so post-construction stormwater runoff will be reduced compared with the existing conditions. He stated that the stormwater management plan was different at the previous meeting. It's now focused on converting the area to a permeable surface and utilizing the existing drain line going to the property. The drain line goes to a catch basin off the property and eventually returns to the wetland.

Chair Crapo asked if the town has an easement for the drainage line. Mr. Scamman stated that the town doesn't have an easement. He stated that they didn't know a pipe was there at the last meeting and the Mahers were helpful in locating the well. He stated that Mike Cuomo did the wetland delineation and survey on the Maher's property. They're proposing full water treatment under the porous area and this system would bypass the neighbor's property, allowing excess water to go through the pipe into the ponding area. He stated there would be an overall reduction in water flow toward the neighbor's property. Mr. Scamman described the primary water treatment that would occur directly under the porous area. He stated that if the area were to be overwhelmed in a storm, there's a 4" perforated pipe that can flow a little water out at a time. He addressed Member Mikolities' previous concerns about the pipe coming across the lawn and frost heaving. He stated that they completely redesigned the system so that it won't flow across the lawn and the neighbor's property. Originally the leach field started at the edge of the well, now the distance is doubled to protect the neighbor's well.

Chair Crapo opened to the public at 7:47 PM.

Jeanne Maher, 162 Washington Road, an abutter to the property, noted that there's no easement for the existing drain and that water from the street flows into her backyard. She stated that the pond is not natural, it's created by water from the town. She expressed her concern that the plan would put more water onto her property.

Chair Crapo explained that, according to their proposal, overflow would only flow in their direction in a storm when the treatment system is inundated.

Ms. Maher described water flow onto their property by two other abutting properties and expressed her concern about any added drainage.

Chair Crapo explained that the board's decision is based on the analysis that surface water flow leaving the property is reduced. He explained the zoning rule that post-construction water flow

can't increase onto a neighbor's property and that the board has heard testimony that this plan will reduce flow.

Mr. Scamman stated that the submitted calculations account for flow and volume. In a 50-year storm event, water would be reduced from 2.4 cubic feet per second to 1.6 cubic feet per second. Member Patten asked Mr. Scamman to explain how that would occur. Mr. Scamman described the plan and mechanisms used to create a reduction in flow.

Chair Crapo asked Mr. Scamman if the town owns the pipe. Mr. Scamman stated that he wasn't able to find anything on record.

Chair Crapo noted that the abutter is worried about increasing volume. He asked how things would change if the plan didn't include overflow, just water percolating through the permeable driveway. Mr. Scamman expressed his concern that if it were to get clogged, it would flow to the house and garage.

Ms. Maher expressed her concern about water pooling in front of her house and in front of the proposed area and that water will be directed toward her property.

Mr. Scamman responded, explaining that water would pool and flow across the properties without the pipe. The pipe was likely installed to alleviate regular flooding from the road.

Member Patten asked if the new construction would be on the side of the house closest to the abutting neighbor. Attorney Kieser stated that it would be on the opposite side of the property.

Member Patten asked how much square footage would be added to the roof and whether it's designed to accommodate the extra flow from the new construction. Mr. Scamman described the new storm drip edge and explained that the reason for the extra large drip edge is to avoid pooling.

Attorney Kieser distributed a GIS tax map to board members and noted that Members Mitchell, Patten, Tuttle, and Chororos weren't present for the February presentation. She stated that Josh and Sharon Scott are most affected by the new construction and they spoke in support of the application at the February meeting. Attorney Kieser noted that the presented expert testimony is un rebutted and they've stated that the stormwater running off the property will be reduced as it will be detained in two locations. In response to Member Chororos' question, she stated that the stone drip edge is 4'x2'.

Chair Crapo asked for the reasoning behind the paved area in front of the garage. Attorney Kieser explained that it would be a parking area for the applicant's parents and would maintain

the integrity of the pervious surfaces. Mr. Scamman also noted that it addressed one of Member Mikolities' previous concerns regarding overflow pipes.

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

Chair Crapo closed to the public at 8:13 PM.

Chair Crapo observed that lot coverage is 21.5% and would stay 21.5%. He expressed that the variance is still needed as construction and modification to the property will occur.

Member Patten agreed. He stated that the stormwater discussion reminds him of the application for 0 Jenness Ave in that the board has expert testimony and has to trust that the experts have done the calculations.

Chair Crapo stated that lot coverage rules exist so there's enough open space to handle runoff. He noted that for this application an engineer has submitted a claim that runoff will be reduced and coverage will remain the same.

Member Mitchell commented that it seems to be an improvement to the property if they have considered the abutter and the location of the drain. He added that the porous driveway system would be an improvement.

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

Sandra Chororos - Yes, the variances are not contrary to the public interest because this project includes a modest expansion of an existing home, it's contained within all of the required setbacks, and it will have an improved stormwater management plan.

John Tuttle - Yes, as stated.

John Mitchell - Yes, as stated.

Rob Patten - Yes, as stated.

Shawn Crapo - Yes, as stated.

2. The spirit of the ordinance is observed:

Sandra Chororos - Yes, granting these variances will not alter the essential character of the locality nor threaten the public health, safety, or welfare

John Tuttle - Yes, as stated.

John Mitchell - Yes, as stated.

Rob Patten - Yes, as stated.

Shawn Crapo - Yes, as stated.

3. Substantial justice is done:

Sandra Chororos - Yes, all that's being requested is an expansion of the existing home to accommodate living space above it. There is no overburdening of land and separation, air, light, and stormwater management are all met by the project.

John Tuttle - Yes, as stated.

John Mitchell - Yes, as stated.

Rob Patten - Yes, as stated.

Shawn Crapo - Yes, as stated.

4. The values of surrounding properties are not diminished:

Sandra Chororos - Yes, the addition complies with all setbacks, it ensures stormwater is treated on the site, and the improvements to the home will increase the value of the property and those around it.

John Tuttle - Yes, as stated.

John Mitchell - Yes, as stated.

Rob Patten - 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, there is a special condition on this lot: the circular driveway accounts for nearly half the existing coverage.

John Tuttle - Yes, as stated.

John Mitchell - Yes, as stated.

Rob Patten - 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, no overbulking will result from granting the variances. There is a stormwater management plan demonstrating all stormwater will be treated on the site, therefore there is no fair and substantial relationship between the purposes of the ordinance and its specific application.

John Tuttle - Yes, as stated.

John Mitchell - Yes, as stated.

Rob Patten - Yes, as stated.

Shawn Crapo - Yes, as stated.

7. The proposed use is a reasonable one.

Sandra Chororos - Yes, a home currently exists on the lot, a front porch and entry is a modest addition, and the garage addition complies with all setbacks.

John Tuttle - Yes, as stated.

John Mitchell - Yes, as stated.

Rob Patten - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Sandra Chororos - Yes.

John Tuttle - Yes, if the board were to enforce this ordinance then the applicant technically didn't have what she has there.

John Mitchell - Yes, as stated

Rob Patten - Yes, as stated.

Shawn Crapo - Yes, as stated.

Motion by Sandra Chororos to approve the application by 444 Owls Revocable Trust for property owned and located at 154 Washington Road, Tax Map 17, Lot 15 for variances

from §190-2.3.C(5) for lot coverage of 21.5% where 15% is allowed. Seconded by John Tuttle.

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

- 3. Daniel & Jennifer Mayo for property owned and located at 1085 Old Ocean Blvd, Tax Map 19.4, Lot 60 request a variance from §190-2.2.E for construction of a septic system 7.9' for the tank on 10.1' for the field on the left property line where 20' is required; from §190-3.1.H(1)(a) and §190-3.1.H(2)(a),(b),(f) and (g) for septic system 27.5' from the wetland where 100' is allowed; the applicant requests a waiver from the Building Code Section §35-14.B(2) for a septic system 27.5' from the wetland where 75' is required and §35-14.B(5) for a septic tank 7.9 ft. and a leach field 10.1 ft. from the side lot line where 20 ft. is required and §35-14.C(2) to permit an AOS System 2 ft. from seasonal high water where 4ft. is required. Property is in the General Residence, Coastal Overlay and Wetland Conservation Districts. Case #17-2024.**

Attorney Monica Kieser of Hoefle, Phoenix, Gormley & Roberts presented the application on behalf of the applicants with Corey Colwell from TF Moran who did the technical work for the proposed septic system.

Attorney Kieser described the property and its challenges including the narrow frontage, configuration, and its proximity to the wetland. Referring to the map, she pointed to an area of poorly drained soil and the tidal buffer zone. The existing septic system is on the east side of the home, is of unknown age and origin, and is roughly 4' from the right side lot line. Attorney Kieser described the septic system as substandard and ancient. She stated that this project wouldn't change the home, it serves the existing house as it sits.

Attorney Kieser reported that the home has a 548-square footprint and overall coverage is 1,824 square feet. Mr. Colwell and TF Moran worked with the state to develop the proposed AOS system which takes up a little more space but has a smaller leach field. She described the proposed system and the state's requirements.

Attorney Kieser stated that an argument could be made that relief isn't necessary and named Building Code §35.14.F as a source. Her correspondence with the Building Inspector dated 3/19/24 gives details of the AOS system and the plan set. She stated that he later contacted the team stating that he'd grant a waiver, but they haven't seen it yet. Attorney Kieser explained that she's also requesting a waiver from the ZBA in an abundance of caution.

Attorney Kieser discussed the requested relief and noted that the RCC reviewed the proposal and expressed their support in a letter dated 3/29/24. Mr. Colwell presented to the RCC in March and they conducted a site walk on 3/19/24 to evaluate the proposed septic system replacement.

Chair Crapo commented that the home to the left has a very similar system in the front yard and is closer to the wetland. Mr. Colwell clarified that it's farther from the wetlands, but their system is in the right of way of the old Ocean Boulevard. He explained that they also requested to put their system in the right of way, but DOT denied them. He stated that the only viable option is to put the system on the left side as the right side encroaches on the other lot. In response to Chair Crapo's question, Mr. Colwell explained that very little yard needs to come up, only about 1.5' and 7' at the property line.

Chair Crapo asked if runoff from the leach field would be an issue. Mr. Colwell stated that it would not be an issue as it's all pervious. He stated that the existing system is in the water table but is not functioning. When applicants are at home they have to have a pump truck come daily. While there is no sign of effluent discharge, the need for it to be pumped daily means it's either a tiny system or it's in failure.

Chair Crapo opened to the public at 8:44 PM.

Jeff Gardner of the RCC stated that this is an improvement and is a much better system given it's proximity to the salt marsh.

Attorney Kieser discussed the variance criteria emphasizing that the applicants are not seeking change the use just make it safer.

Chair Crapo asked about the garage noting that the access is through the neighbor's driveway. Mr. Colwell confirmed that there's no access from the lot.

Chair Crapo closed to the public at 8:50 PM.

Member Mitchell noted that he wasn't able to see the contour lines, but that it seems like a much better system.

Chair Crapo agreed that everything that's been requested makes sense.

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

Sandra Chororos - Yes, it doesn't threaten public health or safety, the new system is healthier than the ancient existing system, and it doesn't alter the essential character of the neighborhood.

John Tuttle - Yes, as stated.

John Mitchell - Yes, as stated.

Rob Patten - Yes, as stated.

Shawn Crapo - Yes, as stated.

1. The spirit of the ordinances is observed:

Sandra Chororos - Yes, as previously stated.

John Tuttle - Yes, as stated.

John Mitchell - Yes, as stated.

Rob Patten - Yes, as stated.

Shawn Crapo - Yes, as stated.

2. Substantial justice is done:

Sandra Chororos - Yes, substantial justice will be done by granting the variances. They need to replace their existing failing system, they have chosen an advanced treatment solution to provide as much protection as possible, the general public will in no way benefit by denying the variances but the Mayos will not be able to use their home.

John Tuttle - Yes, as stated.

John Mitchell - Yes, as stated.

Rob Patten - Yes, as well stated.

Shawn Crapo - Yes, and there are potentially non-existent parts of the system, so this would be a full system to replace whatever may or may not be there currently.

3. The values of surrounding properties are not diminished:

Sandra Chororos - Yes, the new system is an environmental improvement.

John Tuttle - Yes, as stated.

John Mitchell - Yes, as stated and there were no objections from abutters.

Rob Patten - Yes, I would think that it would only increase the value having a safer system neighboring any other abutter.

Shawn Crapo - Yes, as stated.

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

Rob Patten - Yes, the lot's small with 64' of frontage and is entirely surrounded by wetlands or the wetland buffer. There's no other reasonable place to put the system.

Shawn Crapo - Yes, the neighbor's property encroaches and the lack of access to parking makes this an extremely challenging lot.

Sandra Chororos - Yes, as stated.

John Tuttle - Yes, as stated.

John Mitchell - Yes, as stated.

5. 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, while the new system will require side setback and wetland buffer relief, it is far superior with no better location available. Additionally, the new system is vastly better environmentally and for the protection of the wetlands.

John Tuttle - Yes, as stated.

John Mitchell - Yes, as stated.

Rob Patten - Yes, as stated.

Shawn Crapo - Yes, as stated.

6. The proposed use is a reasonable one:

Sandra Chororos - Yes, a single-family home already exists and they need a septic solution.

John Tuttle - Yes, as stated.

John Mitchell - Yes, as stated.

Rob Patten - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

Sandra Chororos - Yes, the lot is tiny and entirely burdened by the wetland buffer. There is no other reasonable location to place it.

John Tuttle - Yes, as stated.

John Mitchell - Yes, as stated.

Rob Patten - Yes, as stated.

Shawn Crapo - Yes, as stated.

Would enforcement of the specific provision do manifest injustice and be contrary to the spirit and purpose of the building code and the public interest?

Sandra Chororos - Yes.

John Tuttle - Yes.

John Mitchell - Yes.

Rob Patten - Yes.

Shawn Crapo - Yes.

Motion by Sandra Chororos to approve the application by Daniel & Jennifer Mayo for property owned and located at 1085 Old Ocean Blvd, Tax Map 19.4, Lot 60 as applied and as presented. Seconded by Rob Patten.

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

- 4. 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 building 26.3' (+/-), a dumpster pad 3.6' (+/-), a generator pad 25.1' (+/-), travel aisle 3.5' (+/-), and light poles 2.2' (+/-) from the right front Sagamore Road boundary where 30' is required; from §190-2.11.C(2) for a dumpster pad 7.0' (+/-), a generator pad 9.8' (+/-), and a proposed travel aisle 7.0' (+/-) from the left side boundary where 20' is**

required; from §190-3.1(H)(2),(a), (b), (c), (e) for proposed building 21.3' (+/-) from a dumpster pad 36.5' (+/-), for a generator pad 27.1' (+/-), from a travel aisle 34.7' (+/-) from the wetland where 75' is required and for the cutting of trees greater than 4.5" in diameter from the wetlands where 75' is required. Property is in the Commercial District. Case # 18-2024.

Attorney Derek Durbin presented the application on behalf of the property owner with **Corey Colwell** (TF Moran) and **Brian Rodonets** (Architect). Attorney Durbin described the current site and its irregularly shaped lot which is 1.5 acres in size. He stated that the lot has over 200' of frontage on Sagamore Road and over 160' of frontage on Frontier Street. The property is bordered to the south and east by residential properties; as a result, the property is subject to the 50' residential zone buffer. The area contains other commercially zoned properties with a mixture of business uses. 40% of the property is encumbered by the 75' wetland buffer due to disconnected and low-priority wetland areas. He noted that only 13% of the property is buildable.

Chair Crapo asked Attorney Durbin if he described the legal building envelope, which he confirmed and clarified that it includes setbacks. He stated that the current building consists of multiple cobbled-together over time, resulting in no consistent architectural theme or style. The property is not in great condition with debris and old oil tanks scattered throughout the property. He stated that the new owner would like to clean up and redevelop the property and is proposing a three-story professional office building and a separate residential building in the north section of the property with four upscale condominium units. Both buildings would be designed to look and feel similar to other structures along Sagamore Road. He stated that this proposal is a little different than what was presented to the board in December. He described the differences and explained that he's held three meetings at the library with abutters and other interested parties to hear their feedback. The presented plan represents the consensus of those who attended the meetings and gave input. He stated that there are still a few individuals who don't support the project, but overall there's general support for what's proposed. He stated that the board should have received letters of support from Mr. Roach and Mr. Teegland.

Chair Crapo confirmed that he received letters of support from Mr. Roach, Mr. Engle, and Mr. Labrie. He also received a letter from Ms. Senf of 8 Sagamore Road, who was not in support.

Attorney Durbin stated that letters from Brick and Barn and Great Island Realty were also submitted.

Member Patten observed that the presentation lacked an image that included both proposed buildings. He stated that considering the scale of the project, he'd like to see a complete rendering to understand what the completed project looks like.

Member Chororos observed that the presentation is also lacking overall dimensions.

Mr. Rodonets stated that dimensions are included in Mr. Colwell's plan and that he would present elevations with the designs.

Chair Crapo observed that relief from §190-3.1(H)(2),(a), (b), (c), (e) is requested, but E has two parts: one is related to clear-cutting, two is regarding cutting a line of trees greater than 4.5" in diameter within buffer. Attorney Durbin clarified that a variance from E2 is being requested.

Mr. Colwell presented a plan including lines to represent the existing building, the previous building presented in December, and the current proposal. He stated that the current proposal has been changed to address abutter concerns and feedback from the library sessions. He described the changes including a reduction in units from nine to four and the distances to the wetlands. He also discussed the debris in the buffer, which would be removed. He described changes to the parking area, including a reduction in impervious coverage, and that all buildings now comply with front, side, and rear yard setbacks. He also explained that the amount of tree clearing has been reduced to what was previously proposed by ⅔. He clarified that the plan only includes the trees to be cut that have a diameter over 4.5".

Mr. Colwell explained that the wetland impact would be reduced. He described the current site's concerns including debris and vehicles in the buffer, pavement within 2' of the wetlands, and a sagging roof that's threatening to collapse. He stated that all environmental and access concerns would be eliminated with this project: the owner has agreed to remove debris from the wetland and buffer and the closest pavement to the wetland would be 34' away. All roof runoff would be diverted to an underground treatment system and drained away from the wetlands. The old septic system would be eliminated and curb access would be restricted to one in the middle of the lot measuring 28' in length. Stormwater improvements would also be safer with vehicular access restricted.

Chair Crapo noted that, regarding the environmental improvements, all changes would need to be made to the property if it were to be used as a commercial space. He asked why residential use is needed. He observed that the proposal doesn't address the residential property aside from one mention that it's critical to the financial viability of redeveloping the land. He stated that he doesn't see any hardship to meet the first two variance criteria and it's one of few parcels in town that can be used commercially.

Mr. Rodonets discussed the design. He noted that the building complies with height restrictions, is not in any setbacks, and is an appropriate design for the area. He stated that it would be an 1880-1900's-era aesthetic with classic details. He outlined the elevations of the office and condo buildings, described the features of each, and the parking area between the two buildings. He noted that aside from dumpster and HVAC units, there's little else outside of the buildings. Chair Crapo asked if the proposal includes four total residential condos, which Mr. Rodonets confirmed.

Member Tuttle asked for the square footage of the whole office area. Mr. Rodonets stated that it's 3,500 square feet. **Mr. Bentley**, the property owner, clarified that it's closer to 6,000 square feet for all three levels, not including the parking.

Member Tuttle recalled that the previous proposal suggested that parking would work because the tenets of the residential units would leave the lot during the day and those spaces could be used for the commercial structure. He asked how parking requirements would be met now if

there were garages and only five spaces for the commercial structure. Mr. Colwell discussed the parking calculations on the zoning relief plan. He stated that they're required to have a total of 18 spaces and have provided 20. The board discussed the parking plan with Mr. Colwell. Member Tuttle observed that additional relief for parking would need to be requested.

Mr. Colwell discussed the reasoning behind the proposed number of spaces, noting that more spaces would require more trees to be cut and more environmental concerns. Chair Crapo explained that zoning runs with the land, it's not tailored to the current occupant.

Mr. Colwell stated that their team met with the town to identify necessary relief; an additional variance for parking was missed by all.

Mr. Bentley stated that abutters didn't want a big parking lot and the decision was made in collaboration with abutters and their input. He stated that this project wouldn't be viable without a residential component, which would allow a little profit to offset the costs of construction, clean up the site, and make it beautiful.

Chair Crapo stated that the board's obligation is to uphold zoning and satisfy zoning criteria. If

Attorney Durbin noted that there's purposely built into the ordinances the ability to seek a variance to change a use that's not permitted. He spoke to the distinguishing characteristics of the property.

Chair Crapo stated that the board doesn't have to make the applicant a profit and that he's struggling with the hardship criteria. He noted that no experts have testified that it's not possible to do this project and keep it as a commercial property.

Attorney Durbin observed that if this application were denied, the board won't see the property change from what exists currently because it's uniquely burdened. He stated that the only viable commercial use would be a blown up commercial project. He stated that the abutters are more concerned about a full site development than having residential use.

Chair Crapo observed that the applicant is required to have double what's been presented for parking.

Member Patten stated that it's a good project from the owner's perspective and from many of the residents' perspectives. The biggest challenge is if the owner decides to sell it, it's not a viable office space to rent in the future. He commented that none of abutters want to see 75% coverage in a commercial setting.

Chair Crapo -noted that it wouldn't have to be one business renting it.

Mr. Colwell stated that their team went before the Planning Board first for a conceptual meeting. The Planning Board's feedback was that this is a tired site and they were glad someone is going to clean it up. He stated that it doesn't make sense to create a sea of parking just because the ordinance requires it.

Planning/Zoning Administrator Reed described the Planning Board's meticulous process.

The board discussed the various avenues that the applicant could take to proceed, including meeting with the Planning Board and TRC. Planning/Zoning Administrator Reed explained the roles of the Planning Board and the Zoning Board and each of their processes.

The board discussed whether the application should be continued and determined that a continuance should be unnoticed to provide abutters with the opportunity to be privy to the conversation.

In response to the team's questions regarding the biggest sticking point, Member Tuttle explained that there are several sticking points but that parking is the current focus. He stated that there's no point in addressing the other concerns without first addressing this; he suggested the team continue the application.

The board discussed how the team could proceed. They suggested a meeting with the Planning Board to work through the details before coming back before the ZBA.

Motion by John Tuttle to continue the application for Elements 9 LLC for property owned and located at 14 Sagamore Road to June 5, 2024. Seconded by Rob Patten.

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

Motion by John Tuttle to continue applications 5, 6, 7, and 9 to June 5, 2024. Seconded by Rob Patten.

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

Motion by John Tuttle to move the July meeting to July 10, 2024 at 7:00 PM. Seconded by Sandra Chororos.

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

Motion by John Tuttle to adjourn at 10:51 PM. Seconded by Sandra Chororos. All in favor.

Respectfully Submitted,
Emilie Durgin

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, Wetlands Conservation District

Application case:

Case #57-2023

Date of decision:

May 1, 2024

Decision:

The Board voted unanimously to grant the following variances from the Rye Zoning Ordinance as presented:

- §190-6.3.B to raze an existing shed and replace with new;
- §190-3.1.H.(1)(a) to replace an existing shed 53'+/- from the fresh pond where 100' 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.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: 444 Owls Revocable Trust, Alexia Leddy, Trustee

Property: 154 Washington Road, Tax Map 17, Lot 15
Property is in the Single Residence District.

Application case: Case #62-2023

Date of decision: May 1, 2024

Decision: The Board voted unanimously to grant the following variances from the Rye Zoning Ordinance as presented:

- §190-2.3.C(5) for lot coverage of 21.5% where 15%


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:

Daniel & Jennifer Mayo

Property:

1085 Old Ocean Blvd, Tax Map 19.4, Lot 60
Property is in the General Residence District, Coastal Overlay and
Wetlands Conservation District

Application case:

Case #17-2024

Date of decision:

May 1, 2024

Decision:

The Board voted to grant the following variances requested from the Rye Zoning Ordinance as presented:

- §190-2.2.E for construction of a septic system 7.9' for the tank on 10.1' for the field on the left property line;
- §190-3.1.H(1)(a) and §190-3.1.H(2)(a),(b),(f) and (g) for septic system 27.5' from the wetland;

The Board voted to grant the following waivers requested from the Rye Building Code as presented:

- §35-14.B(2) for a septic system 27.5' from the wetland;
- §35-14.B(5) for a septic tank 7.9 ft. and a leach field 10.1 ft. from the side lot line;
- §35-14.C(2) to permit an AOS System 2 ft. from seasonal high water.

The variances were granted as presented and advertised with the support by the Rye Conservation Commission letter dated March 29, 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: Elements 9 LLC

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

Application case: Case #18-2024

Date of decision: May 1, 2024

Decision: The Board voted unanimously to continue the application to the June 5, 2024 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: Heritage Home Service

Owner: Chris Galipeau

Property: 312 Wallis Road, Tax Map 18, Lot 68
Property is in the Single Residence District

Application case: Case #19-2024

Date of decision: May 1, 2024

Decision: The Board voted unanimously to continue the application to the June 5, 2024 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: Lisa & Michael Mulcahy

Property: 4 Patriots Way, Tax Map 18, Lot 102
Property is in the Single Residence District

Application case: Case #20-2024

Date of decision: May 1, 2024

Decision: The Board voted unanimously to continue the application to the June 5, 2024 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: Michael Bergeron

Property: 11 Huntervale Ave, Tax Map 8.1, Lot 109
Property is in the General Residence District

Application case: Case #21-2024

Date of decision: May 1, 2024

Decision: The Board voted unanimously to continue the application to the June 5, 2024 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

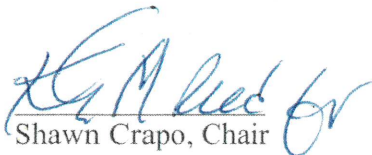
Applicant/Owner: Victory Bastable

Property: 50 Brackett Road, Tax Map 22, Lot 91
Property is in the General Residence District

Application case: Case #22-2024

Date of decision: May 1, 2024

Decision: The Board voted unanimously to continue the application to the June 5, 2024 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: Shoals View Condominium

Property: 42 Washington Road, Tax Map 17, Lot 1
Property is in the Single Residence District

Application case: Case #23-2024

Date of decision: May 1, 2024

Decision: The Board voted unanimously to continue the application to the June 5, 2024 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.