

**RYE BOARD OF ADJUSTMENT
MEETING**

**Wednesday, December 6, 2017
7:00 p.m. – Rye Town Hall**

Members Present: Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Burt Dibble, Patrick Driscoll and Tim Durkin

Others Present: Zoning Administrator Kimberly Reed

I. Call to Order

Chair Weathersby called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

II. Approval of Minutes

- November 1, 2017

Motion by Shawn Crapo to approve the minutes of November 1, 2017 as amended. Seconded by Tim Durkin. All in favor.

- August 9, 2017

Motion by Shawn Crapo to approve the minutes of August 9, 2017 as amended. Seconded by Burt Dibble. Vote: 4-0-1 Abstained: Tim Durkin

III. Letter of resignation from Russ Bookholz

Motion by Shawn Crapo to accept the letter of resignation, as an alternate, from Russ Bookholz with regret. Seconded by Patricia Weathersby. All in favor.

- Chair Weathersby noted that the Board is made up of five elected members with up to five alternate positions. There are two alternate positions open at this time. Anyone who is interested in volunteering may speak with the Zoning Administrator Kimberly Reed.

IV. Applications:

- 1. Joel & Lauren Feid of 7 Skyview Drive, Greenland NH for property owned by Gary A. Ceely, George B. Ceely and the Estate of Glen F. Ceely of 216 Caney Court, Prince Frederick, MD and located at 0 Brackett Road, Tax Map 17, Lot 34-2** requests Variances from Section 203.3B for a shed 5.7' from the left side setback where 20' is required; from Section 301.8A.2 and Section 301.8B1 & 7 for portion of dwelling and patio within the 75' wetlands buffer and requests relief from the Building Code Section 7.9.3.2 for bottom of the effluent disposal system 2' above the seasonal high water table where 4' is required. **Property is in the Single Residence District. Case #44-2017.**

Attorney Tim Phoenix, representing the applicant, addressed the Board. He stated that Joel and Lauren Feid are presently under contract to purchase the undeveloped lot from the current owner. The proposal is to build the home that is on the plans before the Board. He continued they originally applied for this back in September and a couple of continuances were requested. The reason for the continuances was because the Conservation Commission had some concerns, which they expressed in their letter to the ZBA dated October 31, 2017. A continuance was requested so the applicants could address those concerns. There was another meeting with the Conservation Commission. The commission issued a new letter which was recently sent to the ZBA. He noted that this is a large lot for Rye at approximately 86,165sf. It is a triangular lot located on Brackett Road. It was subdivided from the northeasterly adjoining lot in 2010. There are wetlands and a seasonal stream running through the lot. (He pointed the area out on the plan before the Board.) He stated that the applicants are proposing to locate their house in the front left corner. In 2010, when this was approved, there was a plan to put a home in the rear right corner with a 300ft driveway accessing it. At the time, the wetlands setback was 50ft. It has since changed to 75ft. Putting a driveway out back with a driveway running to it, would have more wetland buffer impact than the plan that is being presented. He continued that the applicants' home was originally a little bit closer to the wetlands. After hearing the Conservation Commission's concerns, the home was pushed to the far left so it does not require a left setback variance. There is a pervious patio that has been reduced in size from what was originally proposed. It is just a little corner that is within the 75ft setback. The septic system is outside the 75ft. He believes the town has approved the septic; however, it has not been submitted to the state yet.

Attorney Phoenix stated that as a result of the Conservation Commission comments, the numbers for the requested relief has changed.

Relief needed:

- 203.3B - Side setback for a shed. (No change from original plan.)
- 301.8A.2 and 301.8B.1 & 7 – Wetlands setback of 75ft. The request is 65.7ft from the wetlands. (A reduction of 8.9ft from the original application.) The 65.7ft setback meets approximately 86% of the 75ft requirement. The patio was 54.7ft and has been changed to 62.1ft from the wetlands. (This is a reduction of 7.4ft.)
- RBC 7.9.3.2 – Relief for 2ft from the seasonal high water where 4ft is required.

Attorney Phoenix noted that the Conservation Commission was against the project at first. In their second letter, they recognized that the Feids have attempted well to address their concerns and they would be okay with the proposal. The Board has to weigh the private property rights of the current land owner to sell and the Feids to buy, and make a home, against the purposes of the ordinance and the effect on the wetlands.

Corey Colwell, MSC Engineers, clarified that the septic was not submitted to the town for an approval. It was submitted for a weigh in from the Building Inspector. Upon receiving any variances, that septic plan would go to the Building Inspector for approval. He continued the town requires that the test pits be reviewed by the Building Inspector or Dennis Plante. Several test pits have been done throughout the lot. Test pits were done at the back of the lot and some were done at the front of the lot. It was found that the most suitable area for the septic system is completely out of the 75ft wetland setback. (He pointed this location out on the plan before the Board.) He noted the test pits have been reviewed and the septic design is complete; however, it will not be submitted to the town or state until the variances are in place.

Mr. Colwell stated that originally the house was proposed a little closer to the wetlands. The house has been pulled back and the length of the driveway has been reduced. In addition, the Feids have reduced the size of the house. The two story single family home is now approximately 2,500sf. There is also a shed proposed at the back of the lot. The lot is 86,165sf. (Referring to the plan in front of the Board, he pointed out that forested areas and the wetlands. He also pointed out the seasonal stream.) He continued the house will be tucked up in the front corner. The 40ft front setback is very tight. The house is right on the 20ft setback. The idea is to get the house as far away from the wetlands as possible. When the lot was subdivided in 2010, there was only a 50ft wetland buffer. This house at that time, would not require any relief. Since that time, the wetlands buffer has gone to 75ft. There is a small portion of the house and patio that is within the 75ft wetland buffer. (He pointed this area out on the plan.) He stated the yard has been reduced to not infringe on the buffer. Everything is at least 50ft from the wetlands.

He stated that when the house was a little closer to the wetlands, the Conservation Commission wanted the applicant to look at reducing the size of the house, which was done. They asked if the house could be pulled further from the wetlands to maintain more of a buffer, which was done. The commission also asked if the amount of driveway could be reduced, which was done by pulling the house closer. In addition, the size of the patio was also reduced. Most importantly, the commission said they would like a 50ft buffer and the ordinance is 75ft. They wanted to see something else. The proposal now has a 10ft wide buffer strip to be done with native plantings. He noted that in the Board's packets is a three set sheet of drawings. The third sheet shows a landscape design of what the buffer strip will look like. He noted that it is between 40 and 50 plants that are being proposed in that buffer. This will essentially create a 60ft buffer to the wetlands from the home to the yard, where 75ft is required. He stated that Sheet 1 shows the existing features. Essentially, the lot is completely forested now. The lot is right off Brackett Road. Washington Road is a couple of hundred feet down the street. The lot has decent soils. It has a shallow water table. The test pits that were done throughout the site, indicate the water table is in the vicinity of about 2ft. The site slopes towards Brackett Road very slightly. The idea in reducing the size of the home and reducing the impervious footprint is

to reduce stormwater runoff. All runoff is being directed away from the wetlands towards the front of the home. There is a small driveway and a swale, which will direct the water towards the front of the lot. The intent is to protect the wetlands with a 50ft natural buffer and by diverting runoff towards the road. (He pointed out the location of a catch basin which is collecting a lot of the depression runoff.)

Referring to the catch basin, Member Dibble asked where it drains to.

Mr. Colwell explained that it drains across the street and eventually drains back towards the stream. (He pointed out the location of the stream on the plan.) The stream runs west to east and goes into the marsh. The catch basin goes under the street and carries it to the other side of the stream. He continued that Sheet 2 shows finer details of the building with grades and elevations. For additional privacy, there is a proposed hedge row to provide some screening between the closest abutter, Mr. Snieron. His house is about 62ft away. The only other improvement they are asking for in the yard is a shed in the rear. This is shown in side yard setback to get it out of the 75ft wetland setback. He stated that he was part of the subdivision of the lot in 2010. At that time, an area was shown in the back where a possible house and leachfield could be located. It was determined that building a 350ft driveway to a house and leachfield in the back would have more wetland buffer impact than having the house, driveway, yard and septic system in the front. From an environmental impact, the new proposal has less impact than the house in the back.

Referring to a letter from September 8th, Member Durkin commented that page 2 of the letter it states that since the subdivision the location of the wetlands has shifted slightly to the southwest resulting in more of the property being located within the 75ft wetland buffer.

Mr. Colwell explained the wetlands were delineated in 2010. They went back and reviewed it recently and found that an area had, ever so slightly, grown in size. (He pointed this area out on the plan.) The wetland delineation in that spot is slightly different from the delineation done in 2010.

Vice-Chair Crapo asked if the delineation in 2010 was based on soils. He asked when the switch over from soils to plant material took place.

Jim Gove, Wetland Scientist, explained they have always flagged vegetative wetlands. There was probably a discussion on poorly and very poorly drained soils also being wetlands. In this particular instance, he was out with one of his associates flagging this site. It seems to him that was an area that kind of “sunk” and got more water that expanded out to the stream. If he had seen this in 2010, he would’ve flagged it as a wetland. He thinks things changed a little bit.

Member Durkin clarified that it did not change it increased.

Mr. Gove confirmed.

Chair Weathersby asked the likelihood of that continuing.

Mr. Gove commented it is very unlikely it will shift any further. Essentially what happened, is a large tree fell over and created a hole. That area became wetland and was included with the rest of the wetlands.

Vice-Chair Crapo commented that the house has been moved forward. He asked why they could not go forward another 10ft and get the corner out of the 75ft setback. It looks like there is enough room to move the septic forward.

Mr. Colwell pointed out that the Conservation Commission asked that same question. (He noted the location of the tank and the leachfield on the plan.) He explained they cannot go any closer to the tank or the leachfield. Moving the house forward creates a steeper driveway in excess of 6%, which is steep for a driveway in the winter. Having the house located where the driveway is less than 6% is more desirable. The main reason was the separation requirement from the leachfield and septic tank.

Member Durkin asked the driveway grading in the proposal.

Mr. Colwell stated the driveway is showing a spot grade of 17.70 and 18ft at the garage. Down below the grade is roughly 16ft. That is a 2ft drop in a short distance. Moving it back required the grade to go up another foot and would make the driveway much steeper. The further the house goes back, the higher it will be.

Chair Weathersby asked about the fill and grading.

Mr. Colwell pointed out the area being graded on the plan. He noted there is very little grading going on in the back. The existing grade is 18 to 19 where the house is going. It is pretty much set at grade. The only fill going on is for the extension of the leachfield. (He pointed this area out on the plan.) He stated that because of the shallowness to the water table the leachfield is up. Instead of having it sticking out of the ground, the fill will be blended to the top of the leachfield grade to provide a more level area.

Chair Weathersby asked if there is mostly grading within the 75ft wetland buffer.

Mr. Colwell explained that within the 75ft wetland buffer it will mostly be the same grade. It is going to be tree and stump removal with replacement of lawn.

Member Driscoll commented that the top of the area of the leachfield is being proposed at 19.5ft.

Mr. Colwell confirmed.

Member Driscoll asked what the chances are that that state or the town will want this to be higher. He asked if this will set off the house being raised higher.

Mr. Colwell replied that it is a possibility. They have looked at the design of the system so many different ways. The system did not work in the back as well as the front. The pitch was better in the front and there was more depth to the water table. That is clearly the best spot for it. The

state could come back and say they want it raised. He does not think they will. What has been designed is something that has been approved previously. He noted that it is a gravity system.

Member Driscoll asked how much better the pits were in the front versus the back.

Mr. Colwell replied they were not a whole lot better. They were inches in the separation of water table. It was roughly 4 inches.

Chair Weathersby commented that 2ft to water table is not a lot. The lot slopes towards the road.

Vice-Chair Crapo pointed out the house is at 18. The top of the leachfield is at 19. He asked if there will be a basement or slab.

Mr. Colwell replied there will be a basement.

Vice-Chair Crapo stated if the septic discharge is somewhere in the basement, it seems this would be going uphill to the tank and field.

Mr. Colwell confirmed.

Vice-Chair Crapo asked how it is a gravity system if it goes up from the basement to the tank.

Mr. Colwell replied that he misstated. It is definitely a pump system.

Chair Weathersby asked if the original location had much more separation to the water table.

Mr. Colwell commented that he has the test pits from 2010. It looks like the seasonal high water table is at 27 inches and 25 inches.

Chair Weathersby commented that it is similar. She continued that when she was at the site, it seemed as though the lot pretty much sloped towards the road and the low spot the stream runs through. She asked if the house will be higher than the area by the stream, such that it is changing the water flow towards the stream, whereas, it seems as though it is away right now.

Mr. Colwell explained the finished floor of the house is going to be 20.7ft, 2ft above the existing grade. (He noted the direction the water is flowing on the plan for the Board.) Everything inside the buffer, with the exception of the back area by the shed, is running towards Brackett Road.

Chair Weathersby asked for the contours towards the stream.

Mr. Colwell replied the stream is at elevation 14. The high point is elevation 21.

Chair Weathersby asked why the runoff would not also be heading towards the stream.

Mr. Colwell explained they are adding a swale (shown on Sheet 2) to the back of the house. It is a slight depression that carries the water towards the south. There is also a depression that carries the water from the back corner of the house towards Brackett Road.

Chair Weathersby asked if there will be gutters that will direct the water to this location.

Mr. Colwell explained that regardless of gutters or drip edge, the ground is going to be shaped that the high point will force the runoff towards Brackett Road.

Vice-Chair, Crapo commented that it would be coming around the bottom of the house, running around by the driveway and running along Brackett Road back towards the stream.

Mr. Colwell stated that natural contours are towards the stream. Eventually, yes, it is going to run back towards the stream. By re-routing the runoff through all the grass area and into the woods is a lot of treatment. The runoff is treated when it runs over natural ground. The vegetation and soil will treat any contaminants. He noted this is roof runoff and is not very dirty. The only runoff to be concerned about would be from the driveway. Right now, water leaving this house, if it ran towards the stream, would have roughly 75ft of treatment. The water will have essentially twice as much treatment with the proposal. It has twice as much area to run before it gets back into the stream.

Vice-Chair Crapo stated that right now with no house there is no need for treatment. Also, there is no effluent from the septic heading down the contour towards the stream.

Mr. Colwell pointed out that the septic complies with all town regulations. There is no relief sought for the septic setback wise. The septic is 75ft out of the wetlands.

Chair Weathersby noted that relief is needed from the water table.

Referring to the swale (depression area), Member Durkin noted there is a paved driveway with a little bump. He asked if the water would be flowing across the driveway.

Mr. Colwell replied yes it would have to. The water should not go into the road either. A gutter line is created across the driveway. All the water would run down across the driveway and back towards the street.

Chair Weathersby asked if they are going to satisfy the Building Inspector when he asks it to be shown that no water is leaving the lot.

Mr. Colwell stated that a stormwater management plan will be required before a building permit is issued. That is when these things we be refined further. This is a rough shot of what can happen but a stormwater management plan will be required in the future.

Chair Weathersby stated it sounds like the water will be coming off the lot.

Mr. Colwell noted that they can't increase. Whatever water is leaving that lot today, going towards the road, can be maintained. It just can't be increased.

Member Dibble asked if a sump pump is going to be needed in the basement.

Mr. Colwell commented there will probably be a foundation drain.

Member Dibble asked if it is high enough to let it drain by gravity.

(Mr. Colwell pointed out the area on the plan of where it would run.) He stated the water table at 24 inches is going to need a foundation drain.

Member Durkin asked if this would increase runoff. If there is a foundation that is well below the water table, by definition there will be water flowing out of that.

Mr. Colwell noted it is not runoff. It is groundwater that would be there anyway. It is clean water. The foundation drain is designed so as the water comes up from the foundation it gets into the pipe. It is clean groundwater going into the pipe that would be discharged. It is not runoff coming off a roof or a driveway.

Speaking to Mr. Gove, Chair Weathersby asked how sure they are that this is a seasonal stream and not a perineal stream.

Referring to the geological survey, Mr. Gove noted it is from the pond that the runoff comes from for the wetland that has been created on this lot. The GS sheet shows perineal streams as solid lines. As shown, it stops well away from the lot. (He showed two pictures to the Board.) He stated that the pictures were taken in October. On photo number 2, on the right-hand side, it shows the stream. It appears to have been dug out at some time in the past. Perhaps there was some interest in trying to drain the wetland behind it. As can be seen, it is dry. The rocks on the side were clearly dug out and left along the side. He noted that the culvert along Brackett Road can also be seen in the photos.

Vice-Chair Crapo asked if there are pictures from 2010.

Mr. Gove stated there are no pictures from 2010. These are current pictures. He pointed out an intermittent stream does not flow throughout the year. The pictures are proof that the stream does not flow throughout the year. (He pointed out on the photo the area where the tree fell.) He noted that this is the area where the tree fell and created a wetland area. There is a steeper slope that goes up from this area. That is why he feels there will be no change to the wetland delineation. He continued that photo 4 is looking up into the site towards the house area. There is not a lot of understory in this area. The additional plantings would actually be an improvement because there is not a lot of low herbaceous material in the area of the house site. Moving back, there is more herbaceous material on the slope going up towards the house. He stated that photo 5 is looking down the length of the wetland. There is a dense herbaceous layer, as well as scrub shrub. It's drastically different from the area along the road where the wetland is narrow and there is not a lot of understory. He noted that the upland is also thickly vegetated

with shrub growth, as well as the wetland is. Photo 6 is looking into the heart of the wetland. The stream is very shallow and very diverse. It can also be seen that there is no flow in this area of the stream. It does not even really have a defined channel at that point. The concept of putting a house in the proposed area, as opposed to putting it in back with a long driveway, essentially does not make a lot of sense from the point of fragmentation and the standpoint of impact to the wetland. The concept of putting the house in the proposed area, along with a vegetative buffer, is clearly the best place to put it. The rest of the area will be maintained as a natural area with a fairly extensive wetland in the back.

Vice-Chair Crapo pointed out that the area where there is very little understory is the same area that the applicant is proposing the 10ft vegetative strip. He asked if he can infer that the 10ft strip will not grow.

Mr. Gove explained there will not be trees in there and the section will be opened up. The concept is when the house is put in, and the trees are removed, there will be an edge. That edge will have a lot more of the sunlight coming in.

Member Driscoll asked how many trees will be removed for the site development.

Mr. Gove replied that he does not know.

Mr. Colwell commented that it is hard to put a number.

Member Driscoll asked if it is known how many will be removed in the buffer.

Mr. Colwell commented it is not known.

Regarding the Mr. Colwell's point that the water leaving the site can be maintained but not made worse, Member Driscoll asked if the trees would absorb water at a faster rate than if there were no trees there. If that many trees are being removed, will that adversely affect the water?

Mr. Colwell stated it is clear that the mature trees are going to absorb more water than if they were not there. That is why drainage becomes more difficult and there are long pathways for the water. The longer the path, the more infiltration and treatment. That is why it is a more challenging site to drain. The end result is clean water. Water across the property line cannot be increased.

Member Durkin stated that they were provided with minutes of the meeting from the Rye Planning Board, dated Tuesday, January 12, 2010. On page 10, there is a reference to a statement by Mr. Colwell that states, "The buildable area on lot 2 is at the very back of the lot and is 9,381sf in size". He asked if where the structure is being proposed now was considered when the subdivision was being approved.

Mr. Colwell explained that in order to carve off a new lot it has to be demonstrated that there is a buildable area on that lot. It doesn't mean that it has to be built on but there is a buildable area. There was essentially two buildable areas but only one had to be demonstrated. He explained

that why they chose to build where it is now being proposed is because a 350ft driveway would go through the wetland buffer. That would have more environmental and wetland impact than what is being proposed.

Member Durkin asked if the subdivision was approved on the basis that the buildable lot was located to the rear of the property.

Mr. Colwell replied no. The subdivision was approved based on it being a viable lot that could be built on.

Chair Weathersby stated she was on the Planning Board at the time the subdivision was approved. The applicant came in with a proposal and had to show a buildable area. The applicant showed the buildable area at the rear of the property. The wetland buffer was smaller at that time so both areas had larger buildable areas. The road went on the other side of the wall and stream. As she recalls, that was the plan before them. She reiterated that when they came to the Planning Board they showed a road, a buildable area where the house could go without setback relief and test pits that worked for the septic requirements at the time. They met the various criteria for a subdivision. There was no real discussion on why they were not putting the house in the buildable area in the front.

Referring to the minutes of January 12, 2010, Attorney Phoenix stated that at the bottom of page 11 it states that “the pitch was a unique private setting for the house”. The owners at that time felt a better location for their home was in the back so they could have their privacy. The big change has been in the wetland setback requirements such that both buildable areas are more effected than they were back then. There is more wetland impact on the buildable area in the back than what is being proposed. That is what is behind the change in location. He continued that Mr. Colwell’s efforts in 2010 was to show that a house could be put on that lot, at the time, without zoning relief because the buffer requirement was 50% less. Since then, it has changed such that neither location, front nor back, can be built on without some form of relief. He is asking the Board to consider that there are property rights here. Someone has a right to develop a property that has been properly approved by subdivision if they either comply with all the ordinances or, if they don’t comply, they get relief. He noted that Jim Gove has confirmed this is a seasonal stream, which requires 75ft not 100ft. Even the plans from 2010 identified it as a seasonal stream. He continued that he would also like the Board to consider the Conservation Commission’s two letters. The first one they were against it because of the location and there were no plantings. Those concerns have been addressed. (He read the Conservation Commission’s second letter dated December 1st.) (Attorney Phoenix reviewed the requirements for granting the variances.)

Chair Weathersby asked if the applicant can confirm that they would be okay with the Conservation Commission’s conditions if the proposal were to be approved. The commission has recommended that no water irrigation system be allowed and the use of fertilizers be limited and consist of only organic treatment.

Joel Feid, applicant, confirmed.

Chair Weathersby commented they are not asking for relief to cut trees more than 4.5” in the buffer. She is assuming that relief is not needed.

Attorney Phoenix stated he would not make that assumption. He explained that they have met and vetted this with the Building Inspector, who listed what relief was needed. He would ask the Board, if they are so inclined to approve the proposal, to not penalize the applicant for an oversight on his or the Building Inspector’s part, when those who have something to say about this are present.

Chair Weathersby commented that she is not saying the notice is in jeopardy. It has not been asked for so it will not be granted.

Attorney Phoenix stated they are asking the Board to grant the relief needed to do this project.

Chair Weathersby stated that she thinks they do need that variance. What she is hearing is that they are amending the variance request so that if the Board was to allow this that it include every variance needed, including the cutting of trees 4.5 inches, so that project could move forward.

Attorney Phoenix agreed.

Vice-Chair Crapo stated that this is a situation where the applicant does not own the land. He really has no property rights to lose per say. It is the owner of the land who would benefit or not.

Attorney Phoenix stated the he respectfully disagrees. The applicant has rights because this is where they want to live. If this is denied, it is taking away their right to live there.

Chair Weathersby pointed out that the Ceelys have authorized the Feids, and all the experts before the Board, to file documents and appear in all matters that apply to the Feids application.

Speaking to Mr. Colwell, Member Driscoll asked what the benefit would be in having a pervious driveway, as opposed to the paved driveway that is proposed.

Mr. Colwell stated there would be a benefit, no doubt. Anytime impervious area can be reduced is a benefit with less runoff and water going towards the wetlands.

Member Driscoll asked why this is not part of the application.

Mr. Colwell stated that to construct a driveway that is permeable is about 50 to 60% more in cost.

Speaking to Mr. Feid, Member Driscoll asked what the shed will be used for.

Mr. Feid replied that it will store the mower and some yard tools.

Chair Weathersby asked the size of the garage.

Mr. Feid replied 20x22.

Chair Weathersby opened to the public in favor of the application. Hearing no comments, she opened to the public in opposition.

Tom Clifford, 95 Washington Road, stated that his concern is that the seasonal stream carries an awful lot of water away from their (abutters') properties when it's in season. Even in the fall during a heavy rain storm. He has asked the proposed purchaser to take ownership and maintain flow through that stream, whether a tree falls and blocks it or leaves dam it up. If that happens, all of the back lands will flood. The stream is one of two that drains all the land between Wallis Road and Washington Road. This stream happens to drain the land as far west as Libby Lane. It carries an awful lot of water when it needs to. He has asked the owner to take ownership of maintaining the stream. If this is approved, he would ask that this be put on the approval.

Chair Weathersby asked if there has been a response.

Mr. Clifford noted they refused at the last Conservation Commission meeting. He noted the last paragraph of the Conservation Commission's letter clearly states his concern. *(Note: The Conservation Commission's letter listed Mr. Clifford's address as 25 Washington Road in error. His address is 95 Washington Road.)*

Referring to the photos submitted by Mr. Gove, Member Durkin asked if this is how it normally looks.

Mr. Clifford replied during a drought. During a drought there will be very little flow. When it rains, water starts flowing. In the spring, it is a river. It can be seen how it has eroded away at the banks and boulders have fallen. It winds around as it goes to the back of the property but it is still deep swale. A lot of cobble rocks have been exposed because of the erosion through that stream.

Chair Weathersby stated that clearly from the road up to the bend there is a defined stream bed. It can be seen exactly where it is going. Then it flattens out. If the applicant is asked to maintain it, how would he do that top part?

(Mr. Clifford pointed out the part that would be owned by the applicant on the plan.) He noted that Mr. Snierson's property is on the other side of the wall. When there is a lot of rain, there is a river. (He pointed out the location of the river on the plan.)

Member Driscoll asked if he would have any opposition to the project if the applicant agreed to maintain the stream.

Mr. Clifford replied no, other than the shed within the setback of the side boundary and the intrusion into the wetland setback, which was voted on by the town. However, if this gets approved, he really wants the requirement put on that the stream is kept open. He continued that there is a culvert that runs down Brackett Road and empties into the stream. As he recalls, there are some drainage grates and a culvert running on this side of the road.

Richard Snierson, 711 Brackett Road, stated that he lives right next to the property. The properties share a common boundary of about 486ft. He continued that he is strongly opposed to this project. If this were a normal lot that was dry with 200ft of frontage, 1.98 acres, he would not be before the Board. This is not a normal lot. It is quite a bit different. All the plans show that the lot is owned by Gary Ceely, George Ceely and the Estate of Glen Ceely. There were three sons. He does not see the Estate of Glen Ceely and he does not think the estate has conveyed its interest to the other two. This does not have the consent of all three owners. He feels there are serious questions pertaining to this lot and its approval back in 2010. He requested that the entire Planning Board subdivision file be made part of the record.

Chair Weathersby noted that anything the applicant has presented and everything presented by abutters, all testimony presented at this meeting, will be part of the record.

Mr. Snierson stated he has copies of plans from 2010. As he has noted in his letter, there are serious issues to that approval of 2010.

Chair Weathersby noted that everything that is talked about, and the plans that are used and discussed, will be included.

Mr. Snierson stated that it is clear from the January 12, 2010 minutes and the Technical Review Committee minutes from December 29th that there were concerns from the Planning Board on whether the house would fit. In fact, Town Counsel, Attorney Donovan, and the Technical Review Committee, asked to have extra plans made that would actually show everything would fit. He noted that Sheet 1 shows the buildable area in the back. It is clearly labeled "buildable area 9,381sf". It does not show anything about building in the front. He commented that it was stated that the "triangle" in the front is a bit smaller; however, he has calculated that area as 10,000sf. He thinks it is equal in size, if not bigger, than the rear portion. When it is said that someone can build their house anyplace, which may be true; however, when it is submitted to DES, and there is an approval for a septic system, the system has to be put where DES states. The approval that was given, Sheet 2, clearly shows the test pits were in the back.

Chair Weathersby noted that testimony was heard that the applicant is not relying on those test pits for approval. They have new test pits and are applying for a new approval for a new system in a different location. The old septic is irrelevant for what is being proposed now. That is something they can probably move over because there are clearly new test pits, which have been witnessed by the town official, in the front.

Mr. Snierson stated that Building Code 7.9.4.1 says that in the wetland section of the zoning ordinance and all land within 100ft of these protective wetlands, it is prohibited and is considered unsuitable, to have the disposal of septic and effluent. This is saying that there cannot be a leachfield within 100ft of protected wetlands. This one is clearly right on the edge of the wetlands.

Chair Weathersby asked how his applies to this case. It is not a wetland. It is a wetland buffer.

Mr. Snierson commented the buffer is 75ft. The leachfield is just beyond the 75ft. It is within 100ft of the wetland. He continued that there also has to be a minimum of 44,000sf outside the wetlands district. He does not believe they have 44,000sf outside the district because the whole lot is in the wetlands district. That is found in Rye Land Development Regulations Section 606.3D.

Chair Weathersby stated it is her understanding that the Rye Land Development Regulations do not apply in this instance. She asked how they would apply.

Mr. Snierson stated it applies to all development to land in Rye. It specifically says there are different types of land development and one of them is a minor subdivision.

Chair Weathersby noted this land has already been subdivided.

Mr. Snierson stated they have lost their vested rights. There is a State statute that gives a 6 month, 4 year and 5 year. This was subdivided in 2010, which is almost 8 years ago. They have lost any vested or grandfathered rights they had. There are regulations in the Land Development Regulations that say that approval is null and void because no work has been done to this lot.

Vice-Chair Crapo stated his comments to “vested rights” had to do with the zoning of the land from 2010 versus now. He was not stating that their vested rights to the subdivision of the lot were effected in any way. What he was saying earlier, in a way effects the viability of that subdivision decision. He believes that once that was recorded, in all likelihood that vested the subdivision of the land, the moving of the lot lines.

Mr. Snierson stated that the State statute clearly says that after five years those rights are lost if no improvements have been made on the lot in that entire time. He continued that his letter and attachments clearly show that everything that was said in 2010 was that the house was going to be in the back. There was no mention of the house being in the front. He noted that the house and leachfield cannot be separated, with a string going between the two, because the sewage cannot be pumped underneath the stream. This is a high seasonal water table area. He has been down in his basement within the last couple of weeks and there is water in his sump. There is also a well in his basement. If the water were to come up, it would overflow. The prior owners jack hammered out the floor and put in a 3 or 4 inch PVC pipe. When the water table comes up, the water flows out across the basement to the corner and gets sump pumped out.

Chair Weathersby asked if he is on town water.

Mr. Snierson confirmed. He continued the sump runs continuously. There is also ponding in his backyard in a few places.

Chair Weathersby asked how this relates to the application.

Mr. Snierson replied because of the high water table. (He submitted an exhibit to the Board.) He stated that the exhibit shows where the house intrudes into the buffer. It is about 9ft on either sides of the triangle. When a foundation is dug, it has to be dug out another 3ft to allow the

workers to put the forms in. That intrusion is going to be a minimum of 12ft by 12ft into the buffer. This will be a full basement at 8ft deep. That is not the spirit of the Wetlands Conservation Ordinance. (He presented another exhibit.) He commented that the exhibit actually shows how close all of this is to the stream.

Mr. Crapo noted that on the last exhibit it shows proposed limits of grading. That overburden/over digging is part of the relief they are asking for. Part of asking for a variance from that section means that it does not meet the ordinance. They are giving their argument as to why they should not have to adhere to that section.

Mr. Snierson stated there is a Supreme Court Case from 2008 that says when there is an overlay district, such as the town's Overlay Conservation District, that takes precedence and the town has to go by whichever is stricter.

Chair Weathersby noted that the applicant has asked for relief from that section. They have acknowledged they're intruding and are asking for relief.

Mr. Snierson stated that as far as the Feids having a right to this property, they do not have a right to this property. They do not have any vested interest in this property. It is the Ceelys who do. If it is a self-imposed or a self-created hardship, then they are not entitled to relief. It is the Ceely sons who created the problem by subdividing off this lot. In retrospect, if this went before the Planning Board now that lot would not be allowed to be subdivided off. (He submitted copies of the purpose clauses of the Rye Building Code, Rye Wetlands Ordinance, State statute regarding dredge and fill.) He continued that the plan that was approved called for a house in the back, not in the front, and relief should not be given at this time for this proposal. Plus, the vesting rights expire after four or five years when nothing is done. In fact, the subdivision approval becomes null and void.

Vice-Chair Crapo stated that he did not see anywhere in the Planning Board minutes where it was conditioned that the house had to be built on the back of the lot. He understands the whole process and that was what was presented as the minimum threshold to achieve subdivision. He knows in the past they have had instances where something was conditioned on a building envelope. He asked if it was found in the file that there was a condition limiting the building to that back corner.

Mr. Snierson commented he thinks that is the case. It is not inexpensive to have a plan made. He does not think it was a charade that the Planning Board, Town Counsel and the Technical Review Committee said to submit a plan to do all this work. This is a minor subdivision but yet they were required to submit a topo map, which could be waived by the Planning Board. The Planning Board required a plan that showed the soils, vector arrows and everything else. He does not think the Planning Board would have had the Ceelys go through that expense if it did not mean something.

Vice-Chair Crapo commented that the property could conceivably have A through Z options. To get subdivision approval, they only needed to get "A" approved. He asked if anything was found

that showed the Planning Board said they are limited to “A” and there can never be option “B, C or D”.

Speaking to Mr. Snierson, Chair Weathersby asked if he is saying that based on the plans from the process the only location was in the rear.

Mr. Snierson confirmed. He continued that no septic has been approved or submitted for the front of the lot. It was said that the water is going to be directed away from the wetlands. In looking at the contours, the stream is 20ft from the house. He does not know how the water is going to flow around the way they say it is going to. Having the water flow across the driveway is not really a great idea during freezing weather for the cars backing down the driveway. He pointed out it is a 30mph speed limit on Brackett Road. Cars come down Brackett Road a lot faster than that. He commented there was a problem with the line of sight at first where the driveway was going to be located because it is not all flat. Having water flow across the driveway that could freeze is not a great idea. He stated that the Rye Conservation Commission is not really happy about this. In his opinion, from reading the two letters, they are saying the front is the lesser of two evils. He does not believe the Rye Conservation Commission can change the approval that went to the back. Another factor, is this is in the Parson’s Creek Watershed area. The fact that they have to ask for a variance to put the 10x16 shed in the side yard setback is almost ludicrous when they have a 1.9 acre lot. What this actually shows, the intrusion and the foundation into the wetland buffer, is that what they are trying to do is too much in too little of an area. Could the front area be buildable? Perhaps, if the house was smaller. He reiterated that it is asking too much for what they want to do and it’s too little of an area. This lot is not being singled out. Two-thirds of the lots in Rye have restrictions due to wetlands. He commented they are going to cut trees that are over 4.5 inches in diameter and 4.5ft above the ground. In the regulations, if a tree like that is cut, the stump cannot be dug out. It has to be cut at the ground. However, they were going to dig a hole and put part of the foundation into the wetlands buffer but they can’t dig a stump out. It doesn’t make sense. The idea is to keep the wetlands buffer intact as much as possible. They are going to be violating that by this plan. He noted there is a science behind why the town has the Wetlands Conservation District and the regulations. The theme in the State statute, and elsewhere, is to protect wetlands as they are a diminishing factor. (He reviewed the reasons why he feels the proposal does not meet the criteria for granting the variances.)

Mr. Snierson stated that the Clean Systems Solution for the septic has to have a compressor. The compressor must run continuously when the system is in use. He would ask that the compressor be located in the basement or the garage, as opposed to having it outside. There is no need to have that intrusion on his property of having the compressor running 24/7 outside. He continued that while they have specified a hedge row, they do not specify anything about the hedge row. He would ask that something be put in about the height of the hedge row. It has to be a reasonable height to begin with. He would like something 5 or 6ft and it should be dense evergreens that are deer resistant. He noted that it is not specified how far back the house is going to go. He asked why it could not go back 200ft. They have added an underground propane tank in the side yard setback. That is legal as long as it is 10ft from the boundary line and 10ft from the house, up to 2000 gallons. If it is 2001 gallons or more, it has to be 50ft away. He asked if the propane tank could be specified to be only 2000 gallons. He commented that he

is not sure why the 10x16 shed needs to be 5.6ft to the boundary. If it is only 10ft wide, why do they need 5.6ft on the other side? He asked why this could not be put right on their edge of the 20ft setback. It does not make any sense to put it in the middle and split the 10ft difference to have 5ft on either side.

Chair Weathersby stated that if it is moved over it looks like it would be in the wetlands buffer.

Speaking to Mr. Snierson, Member Driscoll asked if he would have an issue with the application if the house was to go where it was approved in 2010.

Mr. Snierson replied no. He cannot really object to it if it goes in the back. That is where it should go.

Chair Weathersby asked if he feels this way even though it will have bigger wetlands buffer impacts.

Mr. Snierson stated they would have to come for variances and that would be taken up at that time. That goes to the point that it is a self-created/self-imposed hardship (by the Ceelys). They should have envisioned back then there were regulations and they might become stricter over the years.

Referring to the hedge row, Vice-Chair Crapo noted this is a voluntary thing that the applicant has put on their proposal. There is no zoning requirement for that screening of hedge row.

Mr. Snierson stated if they offer it there should be conditions on it. They offer it but don't give any details. He is asking that the details be filled in.

Chair Weathersby thanked Mr. Snierson for his presentation. She noted that the Board is not going to get to the next application. She asked the applicants if they would be willing to continue their application to January 3rd.

The applicant for 0 Richard Road agreed.

Motion by Shawn Crapo to continue the application of Lavoie Alice M. Revocable Trust to the January 3, 2018 meeting. Seconded by Burt Dibble. All in favor.

Chair Weathersby called for a five minutes recess at 9:45 p.m.

The meeting reconvened at 9:52 p.m.

Chair Weathersby opened to anyone in opposition to the application.

Renee Giffroy, 39 Colburn Rd, stated that she has heard about the regulations that were put in place in 2010. If there is something that says the house had to be built in the back, to her that is not relevant. What is relevant are the regulations that are here today and the impact of getting variance for them against the people that live in the area. The 75ft setback is there for a reason.

The fact that the proposal says it's better than what it was before is still not good enough. She is concerned about the number of variances and things that would have to take place in order for this house to be built. She is concerned about the number of trees being removed. When there are a number of trees being taken out, that is going to affect the water flow, which is not allowed to increase over what it was. She continued that she is concerned about the letter from the Conservation Commission that says "if you have to build on this lot this is the better of two options". That does not mean that either of the options is a good option. In terms of impact to the neighbors, it is hard to say if this is approved how much it will affect their properties. She would argue very strongly that this would be a hardship if this were approved. The reason is that part of the reason she wanted to live in Rye is because there is so much wetland and nature. To "eat away" at that not only affects the joy of living in Rye but it also affects the property values. In regards to hardship, this proposal is from someone who is not a current owner at that location. This is not denying a current landowner the ability to improve or make enhancements to the property. It is not a hardship in the sense that it would be a hardship to those that are currently living right in the direct vicinity of this.

Brad Pierce, 39 Colburn Rd, stated that someone has approved a building lot across the street from this in the wetlands. This property is being considered without consideration of what it is going to do to a property that has already been approved in the wetlands. The whole property across the street are in the wetlands. This is going to add more flood waters to the surrounding properties.

No further comments were heard from the public.

Chair Weathersby noted that letters were received from the Conservation Commission. A letter was received for the first proposal and a letter was received for the current proposal, which is dated December 1, 2017. Speaking to Attorney Phoenix, she asked him to address concerns of the abutters.

Referring to Mr. Snierson's requested conditions, Attorney Phoenix stated that he would have to speak with his client. Some of them might be okay and some might not. He noted that Mr. Colwell asked to address the drainage concerns.

Mr. Colwell stated there have been a lot of concerns raised about drainage and it going to the stream. (He reviewed the location of the ridgeline of the proposed house on the plan for the Board. He also reviewed the drainage direction from the front of the house.) Referring to the back of the house, he explained that anything that drains from the roof goes into the pervious patio. This is a drainage basin of stone and sand layers underneath bricks with gaps that captures all the roof runoff. (He pointed out the portion of the house that has runoff going into the ground, which will be captured in a swale.) He noted there is no runoff coming from the back of the house going towards the wetland. All runoff is being diverted into a swale. There is a catch basin that goes under the road. All the water will be diverted to the swale and eventually to the catch basin under the road. That is why it can be said emphatically there is no runoff going to the stream or the wetlands in the back.

Member Durkin noted that the stormwater management plan needs to be reviewed by the Building Inspector. He asked why the plan has not been done already.

Mr. Colwell explained that they applied for a building permit, that was denied and they were sent to the BOA for relief. Once the relief is given, they would apply for another building permit and then the stormwater management plan would happen. It always happens post variances.

Chair Weathersby commented not always. She commented that the stormwater management plan has to show that there will not be an increase in water leaving the site. She asked how present conditions are measured.

Mr. Colwell explained it is modeled. There are various storm events; 10, 25, and 50 year storm events, precipitation charts based on the type of vegetation cover. There is a model topography that will tell how much runoff in a storm event leaves that property. He continued the best absorption is vegetation. It is better than lawn, marsh or anything because the trees do soak up a lot of water.

Vice-Chair Crapo asked if the model takes input from surrounding properties.

Mr. Colwell replied yes. The watershed and the topography have to be analyzed. Anything contributing water to this property, in either direction, is taken into account. Sometimes an analysis will go out over several properties, even 15 or 20 acres. In this case, it is not that big. In regards to timing, he stated that he has done a project or two where the stormwater management plan was done. Ninety percent of the cases it's after the variances. He continued that there was concern that water going across the driveway would be an unsafe condition. That is cured easily with a 4ft or 6ft cobblestone strip. The water will find the cracks and crevices in the cobblestone. The car is not going to slide on cobblestone because the surface is rough across the top.

Attorney Phoenix noted that the Building Inspector's denial letter says a stormwater management plan will be required before a building permit is issued. He knows there are times when it might be required to be done first but this is the typical method. He continued that anything outside the line (he pointed this out on the plan) could be cut down anyways if someone wanted to. The suggestion has been made that the house could be moved. They could make a smaller house and move it outside the wetland setback line. He stated that a 2500sf house in Rye, given the value of land and a growing family, is a reasonable size house. It is a very tiny corner of the house that is within the 75ft line. If it was made smaller or moved out of the zone, they would not have to have the pervious pavers, there wouldn't be an offer for limited kinds of fertilizer, or an offer for no irrigation system or native plantings. Balancing it all out, he believes this project is worth it. He stated that he has been before the Board many times for projects up and down the beach, particularly along the marsh. People who live close to the marsh have been permitted to rebuild their homes, as long as they could show there is going to be no negative affect on the marsh. Nowhere in Mr. Snierson's presentation, nor his submission, did he speak to his real concern about the wetland because he is okay with the house out back, where there is more wetland affect, as long as it is not next to him. As far as Mr. Clifford's comments, he does not think Mr. Feid has a problem with being a good neighbor and cleaning out a stream way that is blocked

and hurting other people's property. The problem is being mandated to do it. Who says how much he is supposed to do and when it is supposed to be done? If Mr. Feid thinks he has done enough, and someone else doesn't, this will invite issues. He submits that Mr. Feid will be a good neighbor and will do his best, within his reasonable power, not to have a circumstance on his land that creates water backup problems on someone else's land. He stated that the Land Development Regulations (LDR) do not apply here. That is not the BOA purview. That is a Planning Board purview. Anything that did or did not happen when the subdivision was approved, happened. This lot exists and has existed for seven years. As for the vesting, if a site plan or subdivision plan was approved with the intended construction on it, it vests for a certain period of time. The subdivision itself is permanent; however, whatever wanted to be done on it is not. If what was supposed to be built is not built within a certain period of time, the vesting is lost. When the subdivision was created with the building out back, it was vested. After five years, that vesting is gone. The owner cannot say they have the right to still put that house out back.

Attorney Phoenix stated that Mr. Snierson mentioned the 44,000sf not being outside the district. The district is the wetland itself. The district is not the wetland and the buffer. Mr. Colwell has calculated that there is 44,000sf outside, other than the actual wetlands. Also, there is 30,000sf of upland. The 2010 subdivision approval got approved based on where a house can go, not where it must go. He continued there was some question as to whether a 100ft or 75ft buffer applies. The ordinance is clear that it is a 75ft buffer. The LDR that Mr. Snierson cited is poorly worded. That section refers to the applicability of the 100ft setback, vernal pools, perennial stream and marshes. Any other kind of wetland is still 75ft.

Vice-Chair Crapo commented that it was a building code section that Mr. Snierson was referring to, not an LDR (7.9.4.1).

Attorney Phoenix read from RBC Section 7.9.4.1. He interprets this to mean that these protected wetlands are those wetlands that require a 100ft setback. The Building Inspector agreed because he is the one who applies them and he said it was a 75ft setback.

Member Durkin asked what the difference is between a wetland versus a protected wetland.

Chair Weathersby explained there could be a small wet area that wouldn't be of enough size to be protected (under 1 acre). There could be a .25 acre on a lot that is not protected under Rye's ordinance.

Attorney Phoenix stated that he has been before the Board with projects that are at least this intrusive into the wetlands buffer with a home. Adding in what the Feids have agreed to do, and what they have agreed to do with respect to the Conservation Commission's recommendations, this is a pretty small intrusion. Mr. Colwell is going to take care of the runoff and the Building Inspector is going to check this via a stormwater management plan. Weighing the overall effect on the wetland, which is negligible, granting the variances is reasonable because denial takes away the value of the entire lot.

Vice-Chair Crapo stated the relief that is requested and the proposal covers doing some plantings in the buffer. He asked if this allows for the removal of the stumps.

Attorney Phoenix stated that he understands Mr. Snierson's position that the stumps cannot be dug up. He commented that the ordinance says something can't be done but if the person wants to do it anyways, they have to ask for reasonable relief to do it.

Vice-Chair Crapo asked if the Director of Public Works, Dennis McCarthy, has approved the driveway location.

Mr. Colwell pointed out that the driveway permit has not been applied for yet.

Attorney Phoenix pointed out that the minutes of the 2010 meeting, page 14, identify specifically the conditions of approval. The requirement to put the house and septic in a specific location is not one of them.

Chair Weathersby noted that the Board has a copy of the Notice of Decision for the Planning Board approval. Referring to the shed, she asked why it cannot be moved closer to the house and away from the side setback.

Mr. Feid explained that they have had to significantly shrink the size of the yard from what was originally proposed. Sticking it in the middle of the yard is not visually pleasing. Having a structure sitting in the middle of the backyard would not maximize the use of that small amount of land.

Regarding the septic, Chair Weathersby asked if what would happen if the 2ft separation was denied. Would that mean more fill was needed to make it level? What would be the repercussions if that were denied?

Mr. Colwell explained if the septic had to come up another 2ft there would need to be more fill and it would be a steeper slope to get down to natural grade. There would be a steep slope between the septic system and the house. It would be unsightly, require more fill and more buffer impact. He continued that when asking for buffer relief, they first try to do everything to minimize that buffer relief. That was accomplished by lowering the system, in terms of wetland impact and fill in the buffer. He pointed out the State requirement is 2ft. The town requires the 4ft and that was enacted prior to the clean solutions systems. It has been proven to the State that less separation is required for these systems.

Vice-Chair Crapo commented that fill is already being brought in. It is being said that a 2ft taller system would have more buffer impact. Will it be only when the truckloads are brought in? Are there going to be long term impacts that will be different than having an extra 2ft of infiltration for the life of the system?

Mr. Colwell explained the contours would have to extend out further. One of the requirements is to have a 3 to 1 slope to get down to natural grade. If the system is 2ft higher, the slope to get down to natural grade is going to be much closer to the wetland and in the buffer. It would be

starting 2ft lower so there will be less horizontal distance to get down to natural grade. As the grade is increased, it will take up more horizontal distance to get the slope down to natural grade.

Referring to the patio, Member Driscoll asked if it was going to be able to absorb all the runoff.

Mr. Colwell replied that it will. It is built up slightly so there is more than 2ft. To make it pervious, there is 18 inches of crushed stone with sand on top of it. That acts like a big absorption chamber for all that runoff.

Member Dibble asked where the water goes.

Mr. Colwell replied that it is infiltrated into the ground.

Member Driscoll commented that it functions like a large raingarden.

Mr. Colwell agreed.

Chair Weathersby clarified that the water runs into the patio, infiltrates into the ground and the groundwater runs towards Washington Road.

Mr. Colwell stated that he is not sure where the groundwater goes.

Chair Weathersby stated that the water is running off the roof onto the patio, down through the sand and somewhere underground. She asked if the water is going towards the leachfield with 2ft of separation, making it only 1ft of separation.

Mr. Colwell noted that the groundwater is going perpendicular to the contours (he pointed this out on the plan). He continued that roof runoff isn't dirty. Once it passes through sand, stone and 2ft of soil, it's pretty clean.

Chair Weathersby pointed out she is more concerned about the runoff becoming contaminated from the leachfield.

Member Driscoll asked if there will be gutters on the house.

Mr. Colwell replied that it is designed to be without gutters. He continued that gutters are not necessary but they can be done, as long as the gutters divert the water to the patio.

Member Durkin asked if there was an attempt to design a house where a variance was not needed for the wetland buffer.

Mr. Colwell explained that they have tried to place 3 or 4 house on this lot. The corner of the house is approximately 5ft from the 40ft front yard setback. The septic has to go where it is being proposed. The test pit was 29 inches to the water table and those were the best pits. The best location for the septic system is where it is being proposed. He noted the clean solution system is the smallest possible footprint system. The system is designed to be 10ft wide by 20ft

long. Any other system is going to require a longer leachfield. That is important because the house is sited based on the leachfield. The building cannot go any further out of the buffer because than it would be infringing on the State separation requirement between the tank and the house.

Member Durkin asked if there is room to put it in the back.

Mr. Cowell explained that they looked at putting it back there. There was less separation to water table. The best soil is where it is proposed. He noted that the leachfield could be put in the back with the house moved forward; however, that would require an elevated leachfield.

Vice-Chair Crapo asked if the tank could go between the field and the driveway.

Mr. Colwell explained that typically the tank is located as close to the house as possible. The run from the house to the tank should be straight. He commented that this could be done. It would mean that the leachfield would be close to the driveway, which they try to avoid. He reiterated that the best spot for the leachfield is where it is being proposed. He stated that they have looked at 3 or 4 different house designs. This was the design that had the best balancing act. This design has the least buffer impact, with the best possible drainage solution, and best possible septic solution with the safest access to the house.

Chair Weathersby asked for clarification on why the idea of moving the septic to the back was discarded, besides it being unsightly because it will be a mound.

Mr. Colwell stated it would still create an unsightly condition and drainage would be going in all directions. Water from the high point will run off in all four directions. In the proposed location, the runoff can be managed. The first reason is the unsightliness. The second reason is that it is not the best runoff condition. It can work but it is not ideal. He pointed out that the house would move forward and there would be an unsafe driveway condition.

Speaking to Mr. Snierson, Member Durkin asked if he would be more amendable to relief on a side yard setback. He asked if he would be amenable to moving the house closer to his property to bring it out of the wetland buffer.

Mr. Snierson replied no.

Chair Weathersby asked if anyone would like to address the new information that was introduced that came from these questions.

Mr. Snierson stated that there was testimony about houses near Petey's and Fairhill Manor but those are existing houses. The State statute says that if a property owner has to redo the septic they don't have to move or tear down the house. This is brand new raw land. There is no house there so they are not entitled to the special exceptions or rules for someone that has a house on Rye Beach. He stated the State statute says that the subdivision is null and void after five years. The owner would have to go back for approval after five years. He commented the clean

solution systems may be good but they are new and have not been around forever. It is just too much being asked for in too little of an area.

Referring to his request to keep the stream open, Mr. Clifford noted that if the property is sold in the future to a new owner, that owner could block anyone from coming in to open up the stream. Beavers can come in and build a dam. He would have no recourse to go onto that property to open up the stream. That is why he would like to have it included.

Attorney Phoenix stated that he does not think the landowner has a right to block off his land and create a nuisance on someone else's by flooding it.

Chair Weathersby asked where the compressor was going to be located.

Mr. Feid replied in the basement.

Chair Weathersby commented there was a request for a condition that the hedge row be 5 or 6ft tall at minimum and the evergreen being deer resistant. Also, the propane tank be 2000 gallons or less.

Referring to the hedge row, Attorney Phoenix stated that he does not think it is reasonable that the Board make it a condition to be a certain height. If the abutting property owner wants to do something for his own protection he can do it. He does not know if there is any minimum in size for a propane tank but the propane company is going to say what size is needed. Also, it is not going to be seen whether it is 2000 or 5000 gallons. He does not see this as being reasonable.

Mr. Feid stated that he put the proposed hedge on for privacy. It will happen but he does not feel he needs to commit to plantings now. He will do plantings but does not want to commit to a certain size.

Hearing no further questions, Chair Weathersby closed the public hearing at 10:52 p.m.

Speaking to Mr. Colwell, Chair Weathersby asked if any approvals are needed from the State for Alteration of Terrain.

Mr. Colwell commented that no other State permits are required.

Member Durkin stated the obvious challenge is this is a small building envelope on a lot that clearly has wetlands, groundwater and drainage issues. In response to what Attorney Phoenix said about other variance requests the Board has had with respect to wetlands, in a lot of those cases it was with an existing structure that is already within the wetlands buffer. The issue of hardship is such that the owner is coming in and saying they want to make alterations to the property but need relief because it is already in the wetlands. This is different case because there is no existing structure. It is not working with the basis that there is already a structure in the wetlands. To him, that is very much a distinguishing factor as it relates to this request.

Chair Weathersby stated that every proposal is unique.

Member Durkin stated that fact that this has been done for other properties does not create precedent for this. It's a combination of groundwater issues, needing a septic 2ft above versus 4ft, and the buffer being disturbed, not only with the building footprint, but with other alterations that will be made to the property. Is there a way to come up with a plan that does not require these variances? He struggles with this particular design and the variances that are required.

Member Driscoll stated he looks at it two different ways. Someone could come in and build a house and be conforming to the zoning regulations. It will be more invasive to closest abutter. There will still be potential stormwater management issues that other neighbors are concerned with. He also looks at the application and feel they are maximizing their ask. It does have similarities to other cases that have gone before the Board but this one is encroaching into the 75ft buffer. It is asking for a full basement in a space where groundwater is close to the test pits. It is asking for relief from some of the septic design issues. He asked why the Conservation Commission did not have any forethought into the tree removal. He feels this is a miss on their part. It is the responsibility for the applicant to provide that information; however, the Conservation Commission should also comment on that. He continued that because this is a maximize ask, this is a case where he would love to see a stormwater management plan. He can look at what is presented and it seems to make sense; however, compared to the stormwater management plans that have been provided with applications, it gives far more detail in regards to raingardens and what the patio is going to look like to make sure it is going to absorb the water. If it doesn't, they can go back to literature and say "this is what was promised, there are issues with what the abutters were concerned with and the plan did not work. Here is the literature that shows that". If the application is approved contingent upon a stormwater management plan, it is taken off the Board. It is not the Board's responsibility. It is put on the Building Inspector to approve or deny that stormwater management. He thinks that when they are looking at the five criteria for the variances, it is important to have the knowledge before it is decided.

Vice-Chair Crapo stated he reiterates a lot of what both Member Durkin and Member Driscoll have said. In looking at this and listening to the arguments, he can see both sides. They say it's minimal and it is only the corner of the house. At the same time, it is only the corner of the house. Architecturally, find a way to keep it out of there. It was said that it can't be moved because the driveway will be too steep and because of the septic. There are so many things pushing the outside of the envelope that it raises a red flag that maybe it shouldn't happen. He understands the applicant does not own the lot yet, wants to buy it and put a house here. Obviously, the people who subdivided this years ago want to sell it and move on. He thinks there is just too much pushing against all the envelopes. It is a pretty small development area. The due diligence to count the trees could've been done. Some of this stuff could've been done at no a huge expense. He understands the reasons for not spending the money to submit for a septic approval. At the same token, the amount of "shoehorning" that is being done to try and get a house in there, that is a sacrifice he thinks they should take. They might go through all this and get it approved but then it could fail the State septic design or the driveway may not be approved. There are too many little things that all end up adding up to if one of them is out of line the house of cards falls in. It is asking too much for this delicate situation.

Member Dibble stated he is troubled with the water issue in the area. There has been testimony from a lot of people that the water situation might be more troublesome than it might appear in this particular season. Now they want to take out a whole lot of trees. That is not going to help. He thinks people intuitively believe that the water problems are going to get worse as time goes by. This feels like a setup for a bad outcome in a decade or two. He shares the notion that some of the question marks that are not answered should be answered before the Board makes a decision. He likes the idea of the Conservation Commission being pressed a little bit on this. He likes the idea of having the Public Works Director's opinion about the driveway. He especially likes the idea of the stormwater management plan. He thinks the project tortures the land.

Chair Weathersby stated she does not have quite the negative view that the other members share. She thinks the driveway and stormwater management plan will take care of it and they can be made conditions. They cannot get a permit to build the house unless they have a driveway that satisfies all the town's regulations. She is more confident that the stormwater management can work. She thinks a lot of effort has been made to get things directed the right way and filtered through before it goes back into the stream. She is somewhat concerned about the 2ft separation. She commented that she has voted in the past to let a septic go with the State minimum, rather than the town's. However, where this is in the Parson's Creek Watershed she is particularly hesitant. It was heard that it could be a mound system in the back but then that changes the stormwater. She wrestles with that but is concerned about the minimal separation, particularly in light of changing environmental conditions. She also struggles a bit that it is a minor intrusion, relatively speaking, into the wetland buffer. Obviously, a smaller house could be designed but it wouldn't be the house the applicant wants. She noted that a house could fit in the building envelope. Would it be better for the neighborhood? Would it be worse? It might not be as attractive and less expensive. She wrestles with a lot of this.

Member Driscoll stated that if he had more information he could be in favor of this. It is not that he is adamantly against this application. He does not feel comfortable without a stormwater management plan or more details on what is going to happen during a storm with the water coming from the house and lot. He also would like to know what the applicant can show in terms of where the trees come out. He thinks that someone can build within the zoning regulations and the neighbors are going to be equivalently, if not more, upset about what is put on the lot. He likes the fact that there are considerations into it. He likes the fact that if they are coming with this application that they have to abide by some of the rules the Board puts into place. With more information, he may be completely for this application.

Chair Weathersby noted that the Building Inspector will require them to provide a stormwater management plan that is completed by a professional. The plan must show that the water will not increase off the lot. The plan will be in place before a house could get built.

Vice-Chair Crapo stated in all practicality it is a judgement call the Board has to make now on whether they think it would work or not.

Chair Weathersby asked if they are saying that because a stormwater management plan hasn't been done, and it has not been specifically analyzed, that they are not sure whether or not it will

work and there may need to be some other alterations to the land to make it work. Anything can pretty much work if enough enhancements are made.

Member Driscoll stated he is voting on the five criteria. Part of the five criteria is to make sure that he is preventing the overcrowding of land and the property's natural resources and other requirements are met. He does not feel that he is in support of this. With some other information, he could get behind it. Right now, if he is voting on the five criteria the way he understands them, he is not confident enough to vote in favor.

Member Dibble stated that he thinks the additional information that could be available may make this feel different. He does not think it is the job of the Board to tell the applicant what to do. In a complicated situation like this, it is beyond the Board's purview to get into that territory. He thinks the town is moving towards more conservative land management. He is not comfortable crowding the setbacks on the water resources (wetland buffer).

Chair Weathersby noted that the Board will be voting on today's requirements, not what the town might be moving towards.

Member Dibble stated he is voting on today's requirements; however, his sense is that there is going to be more, not less, trouble with water. He might be more comfortable if there was a better water management plan relative to the property. He is convinced by Member Durkin's observation that often when leeway is granted on water related buffers it is on existing properties that are being changed in some way. This is a new deal.

Vice-Chair Crapo stated a lot of the ones the Board has seen either deal with an existing home or an already disturbed buffer.

Chair Weathersby stated she does not think the water issue is all that complicated. There is a roof peak on the house and a roof peak on the garage. It is known what way the water is flowing. The water has to go through 50 or 70ft of vegetation it has to go through before it gets to any type of wetland.

Member Durkin stated that with all due respect to the applicant, they can come up with a plan that does not need a variance. That is where he gets hung up.

Chair Weathersby agreed.

Chair Weathersby called for a vote on Section 203.3B, side setback for the shed:

1. Granting the variance would not be contrary to the public interest?

Shawn Crapo - No
Patrick Driscoll – Yes
Tim Durkin – No
Burt Dibble - No
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo - No
Patrick Driscoll – Yes
Tim Durkin – No
Burt Dibble - No
Patricia Weathersby – Yes

Vice-Chair Crapo stated the part of the reason for his vote of denial is because as proposed the shed is in its location. A possible proposal could incorporate the utilitarian aspects of the shed into a different structure. He is associating it as proposed, in its location, as part of the whole project.

3. Substantial justice is done?

Shawn Crapo - No
Patrick Driscoll – Yes
Tim Durkin – No
Burt Dibble - Yes
Patricia Weathersby – Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo - No
Patrick Driscoll – Yes
Tim Durkin – No
Burt Dibble - No
Patricia Weathersby – Yes

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

Shawn Crapo - Yes
Patrick Driscoll – Yes
Tim Durkin – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

6. There is no fair and substantial relationship between the general purpose of the ordinance provision and the specific application of that provision to the property?

Shawn Crapo - No
Patrick Driscoll – Yes
Tim Durkin – No
Burt Dibble - No
Patricia Weathersby – Yes

7. The proposed use is a reasonable one?

Shawn Crapo - No
Patrick Driscoll – Yes
Tim Durkin – No
Burt Dibble - No
Patricia Weathersby – Yes

8. Therefore, literal enforcement of the ordinance would result an unnecessary hardship?

Shawn Crapo - No
Patrick Driscoll – Yes
Tim Durkin – No
Burt Dibble - No
Patricia Weathersby – Yes

Chair Weathersby called for a vote on Section 301.8B (1) and (7), surface alteration:

1. Granting the variances would not be contrary to the public interest?

Shawn Crapo - No
Patrick Driscoll – No
Tim Durkin – No
Burt Dibble - No
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo - No
Patrick Driscoll – No
Tim Durkin – No
Burt Dibble - No
Patricia Weathersby – Yes

3. Substantial justice is done?

Shawn Crapo - No
Patrick Driscoll – No
Tim Durkin – No
Burt Dibble - No
Patricia Weathersby – Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo - No
Patrick Driscoll – Yes
Tim Durkin – No
Burt Dibble - Yes
Patricia Weathersby – Yes

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

Shawn Crapo - Yes
Patrick Driscoll – Yes
Tim Durkin – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

6. There is no fair and substantial relationship between the general purpose of the ordinance provisions and the specific application of those provisions to the property?

Shawn Crapo - No
Patrick Driscoll – No
Tim Durkin – No
Burt Dibble - No
Patricia Weathersby – Yes

7. The proposed use is a reasonable one?

Shawn Crapo - No
Patrick Driscoll – No
Tim Durkin – No
Burt Dibble - No
Patricia Weathersby – Yes

8. Therefore, literal enforcement of the ordinance would result an unnecessary hardship?

Shawn Crapo - No
Patrick Driscoll – No
Tim Durkin – No
Burt Dibble - No
Patricia Weathersby – Yes

Chair Weathersby called for a vote on Section 301.8A (5) and (2), cutting of trees:

1. Granting the variance would not be contrary to the public interest?

Shawn Crapo - No
Patrick Driscoll – No
Tim Durkin – No
Burt Dibble - No
Patricia Weathersby – No

2. The spirit of the ordinance is observed?

Shawn Crapo - No
Patrick Driscoll – No
Tim Durkin – No
Burt Dibble - No
Patricia Weathersby – No

3. Substantial justice is done?

Shawn Crapo - No
Patrick Driscoll – No
Tim Durkin – No
Burt Dibble - No
Patricia Weathersby – No

4. The values of surrounding properties are not diminished?

Shawn Crapo - No
Patrick Driscoll – Yes
Tim Durkin – No
Burt Dibble - No
Patricia Weathersby – Yes

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

Shawn Crapo - Yes
Patrick Driscoll – Yes
Tim Durkin – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

6. There is no fair and substantial relationship between the general purpose of the ordinance provisions and the specific application of those provisions to the property?

Shawn Crapo - No
Patrick Driscoll – No
Tim Durkin – No
Burt Dibble - No
Patricia Weathersby – No

7. The proposed use is a reasonable one?

Shawn Crapo - No
Patrick Driscoll – No
Tim Durkin – No
Burt Dibble - No
Patricia Weathersby – No

8. Therefore, literal enforcement of the ordinance would result an unnecessary hardship?

Shawn Crapo - No
Patrick Driscoll – No
Tim Durkin – No
Burt Dibble - No
Patricia Weathersby – No

Chair Weathersby stated that although it may seem that her voting from this round to the last round may be contradictory, she does not feel as though there was sufficient information on the cutting of trees and how it would affect the wetland.

Chair Weathersby called for a vote to Building Code 7.9.3.2:

- **Would enforcement of 7.9.3.2 do manifest injustice and be contrary to the spirit and purpose of the Building Code and public interest?**

Shawn Crapo - No

Patrick Driscoll – No

Tim Durkin – No

Burt Dibble - No

Patricia Weathersby – No

Motion by Shawn Crapo to deny the request for relief as deliberated and as voted; the reasons discussed will be specified in writing in the Notice of Decision. Seconded by Patrick Driscoll. All in favor.

2. **Lavoie Alice M Rev Trust, Alice M Lavoie Trustee of Epping NH for property owned and located at 0 Richard Road, Tax Map 5.2, Lot 156 requests Variances from Section 601 to build on a non-conforming vacant lot; from Section 304.3 for construction in a non-conforming vacant lot in the Coastal District; from Section 204.3 F for lot of size of 8,795 SF where 44,000 SF is required; from Section 204.3C for a walkway within the 30' front yard setback; from Section 204.3B for a brick walkway within the 20' side setback. Property in the General and Coastal Overlay Districts. Case #47-2017.**

- **Continued to the January 3, 2018 meeting. See motion above.**

Adjournment

Motion by Tim Durkin to adjourn at 11:28 p.m. Seconded by Burt Dibble. All in favor.

Respectfully Submitted,
Dyana F. Ledger