

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant: Joel & Lauren Feid of 7 Skyview Drive, Greenland NH

Owner: Gary A. Ceely, George B. Ceely and the Estate of Glen F. Ceely of 216 Caney Court, Prince Frederick, MD

Property: 0 Brackett Road, Tax Map 17, Lot 34-2
Property is in Single Residence District

Application case: Cases # 44-2017

Date of decision: December 6, 2017

Decision: The Board voted 5-0 to deny the Applicants variances from the following sections of the Zoning Ordinance:

1. 203.3(B) for a shed 5.7' from the left side setback;
2. 301.8(B)(5(b)(2) for cutting of trees in the wetlands buffer;
3. 301.8(B)(1) for portion of dwelling and patio within the 75' wetlands buffer; and
4. 301.8B7 for portion of dwelling and patio within the 75' wetlands buffer.

The Board found that the applicants' requests for variances from the above sections of the Zoning Ordinance failed to satisfy the criteria for granting variances – the specific reasons include:

1. Site work for the proposed home involves tree and vegetation cutting, the addition of fill and grading within the wetlands buffer, the effects of which may be detrimental to the wetlands and wetlands buffer.
2. The location of the proposed dwelling, patio and yard partially within the wetlands buffer may be detrimental to the wetlands and wetlands buffer.
3. A home of a different size or configuration could be located entirely outside of the wetlands buffer on the property.
4. There was insufficient specificity as to the management of storm water under the proposed conditions without a storm water management plan.

5. There was insufficient specificity as to the number of trees greater than 4 ½ inches in diameter (measured at a height of 4 ½ feet above ground level) that would be removed for the proposed improvements.
6. The shed was proposed to be located too close to the side property line.
7. The values of surrounding properties would be diminished if the variances were granted.
8. The proposed wetlands buffer disturbances are contrary to the public interest.
9. The loss to the applicants by denying the variances is not outweighed by the gain to the general public of protecting its wetlands, watershed and neighborhood.

The Board also voted 5-0 to deny the Applicant's request for relief from Rye Building Code Section 7.9.3.2 for the bottom of the proposed effluent disposal system to be 2' above the seasonal high-water table. This denial was based on concerns that such a system may not be adequate and the location of the property both within the Parsons Creek Watershed, an area of particular concern to the Town of Rye, and at the outer edge of a wetlands buffer.

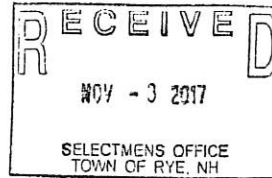

Patricia Weathersby
Chairman

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.

Attachment
12-6-17

11/3/17

Russell Bookholz
32 Porpoise Dr
Rye NH 03870



11/3/2017

To the Board of Selectman

Effective immediately I am resigning my positions as CIP Representative, ZBA Alternate, Demolition Committee member and Deputy Building Inspector as I am moving out of town .

It has been a pleasure serving my community.

Sincerely,

A handwritten signature in cursive script, appearing to read "Russell Bookholz".

Russell Bookholz

Attach minutes
12-6-2017



RYE CONSERVATION COMMISSION
10 CENTRAL ROAD
RYE, NH 03870

SECOND LETTER OF RECOMMENDATION

December 1, 2017

RE: 0 Brackett Road, Tax Map 17 Lot 34-2 Owners, Gary A. Ceely, George B. Ceely and the Estate of Glen F. Ceely of 216 Caney Court Prince Frederick, MD, Joel and Lauren Feid, 7 Skyview Drive, Greenland, NH.

The Rye Conservation Commission conducted a site walk at 0 Brackett Road on October 25, 2017. A letter of recommendation was written and submitted along with photographs and a neighbor's letter on October 30, 2017 and distributed to the ZBA and interested parties. Since then, the Feid's, represented by T.F. Moran Engineer Corey Colwell, submitted a revised Zoning Relief Plan dated November 13, 2017. This revised plan was reviewed by the RCC on November 16, 2017.

Changes from the previous plan submitted September 7, 2017 are:

- a) the proposed home has been slightly reduced in size and has been positioned as close to the southern boundary as possible without having to apply for a side variance.
- b) the proposed home's corner of the house will now be 65.7 feet from the wetland boundary where 75 feet is required.
- c) the drip edge will be 64.3 feet from the wetland boundary.
- d) the proposed pervious paver patio has changed in dimension and at its closest will be 62.1 feet from the wetland boundary.

As submitted there will be no impact in the 50-foot buffer and the applicant has agreed to 10 feet of native plantings abutting the 50-foot buffer. This will give the property 60 feet of native buffer plantings to the wetland boundary where 75 feet is required.

The stone wall removal and relocation to the northern property line has been taken off the plan. The zoning board will be aware, if this owner or future owner would like to move this stone wall, it must be done by hand and without the use of machinery as approximately 320 feet of the stonewall is within the 75 foot wetlands buffer.

The suggestion of moving the home to the northwest corner was discussed. By moving the proposed home to the north western corner of the lot, a significant amount of disturbance would be created in the wetlands buffer just by building the 300+ foot driveway. If the driveway were to be treated with chemicals for ice this would take place within the 75-foot wetlands buffer. The driveway in this proposal is outside of the 75-foot wetlands buffer.

Neighbor Mr. Tom Clifford of 25 Washington Road spoke to water issues, the stream on the property, and the potential back up and the flooding of his property. His home was built in approximately 1903 and the water table is high in this area. Mr. Clifford asked if there is a mechanism or wording that could be incorporated into the ZBA's notice of decision (if this project is allowed) that would address the neighborhood's concerns with regard to the back up of this stream and the potential flooding of the

neighbor's lands. Since the Ceelys are not present and have not been present, the neighbors have been taking care of the stream by unclogging it when it becomes clogged. This stream is part of the sensitive Parsons Creek Watershed.

Neighbor Mr. Richard Snierson, an abutter at 711 Brackett Road, spoke against this proposal and spoke to the water issues, high water table, disruption of the wetlands buffer, the ledge, clearing of trees, clearing of brush and presented the commission with the January 12, 2010 minutes of the Rye Planning Board when the property was discussed with regard to subdividing 691 Brackett Road, Tax Map 17, Lot 34 for Gary A. Ceely, George B. Ceely and the Estate of Glen F. Ceely. These minutes are attached to this recommendation letter for the ZBA's review.

The ZBA has been given RCC's meeting minutes from October 19, 2017 where most of these concerns are recorded. RCC will have the minutes of their November 16, 2017 meeting forwarded to the ZBA.

The RCC still has concerns as expressed in the recommendation letter dated October 30, 2017.

The removal of trees and vegetation in the buffer will result in higher groundwater levels and greater stream flows, which could result in more frequent or severe flooding in the area. Trees and forest shrubs pull water out of the soil by a process called transepiration or transpiration. The water is then used to sustain the trees and shrubs and is eventually released into the atmosphere as water vapor. A lawn is normally enriched by nitrogen fertilizer of some kind and often maintained using herbicides and/or pesticides, which can flow, or percolate into watercourses. The need for an appropriate distance from a wetland is exactly why buffers are required to allow sufficient filtration of such materials before they enter a stream or wetland. This is one reason the Town of Rye voters adopted a 75 foot wetland buffer.

However, the RCC feel the Feid's have tried hard to accommodate the suggestions from the RCC and alleviate the concerns of the neighbors. RCC also feels that if this lot is to be developed, this proposed home and its location, is probably the best-case scenario.

The Commission would also recommend that no water irrigation system be allowed on the property and that the use of fertilizers be limited and consist only of organic treatments

Respectfully submitted,



Francis P. (Mike) Garvan II, Clerk

NHDES native planting guide

Rye Planning Board minutes from 2010 - marked up by Richard Snierson

CC: Joel and Lauren Feid
Corey Colwell, TFMoran
Rye ZBA
Tom Clifford
Richard Snierson

attachment minutes
ZSA 12-6-17

handout 12-6-17
Jim Gove

Photo 1

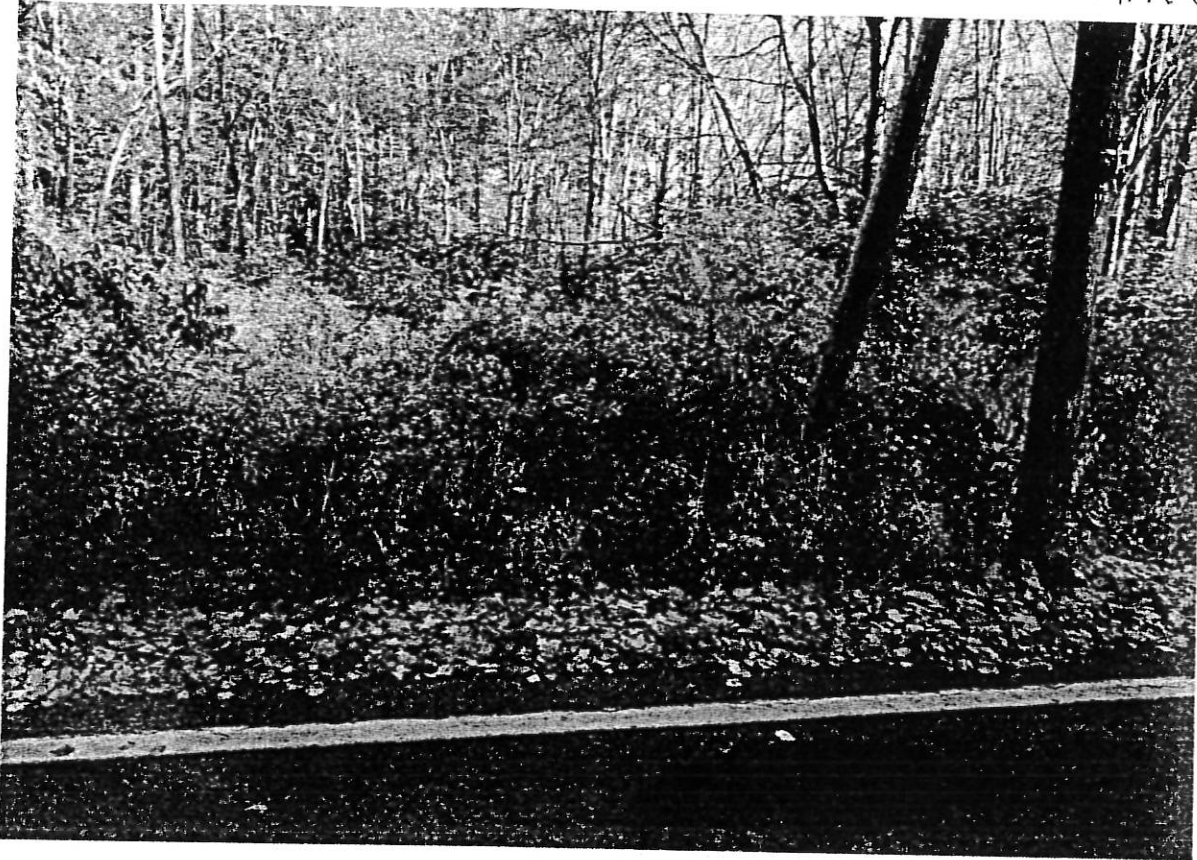


Photo 2



Photo 3



Photo 4



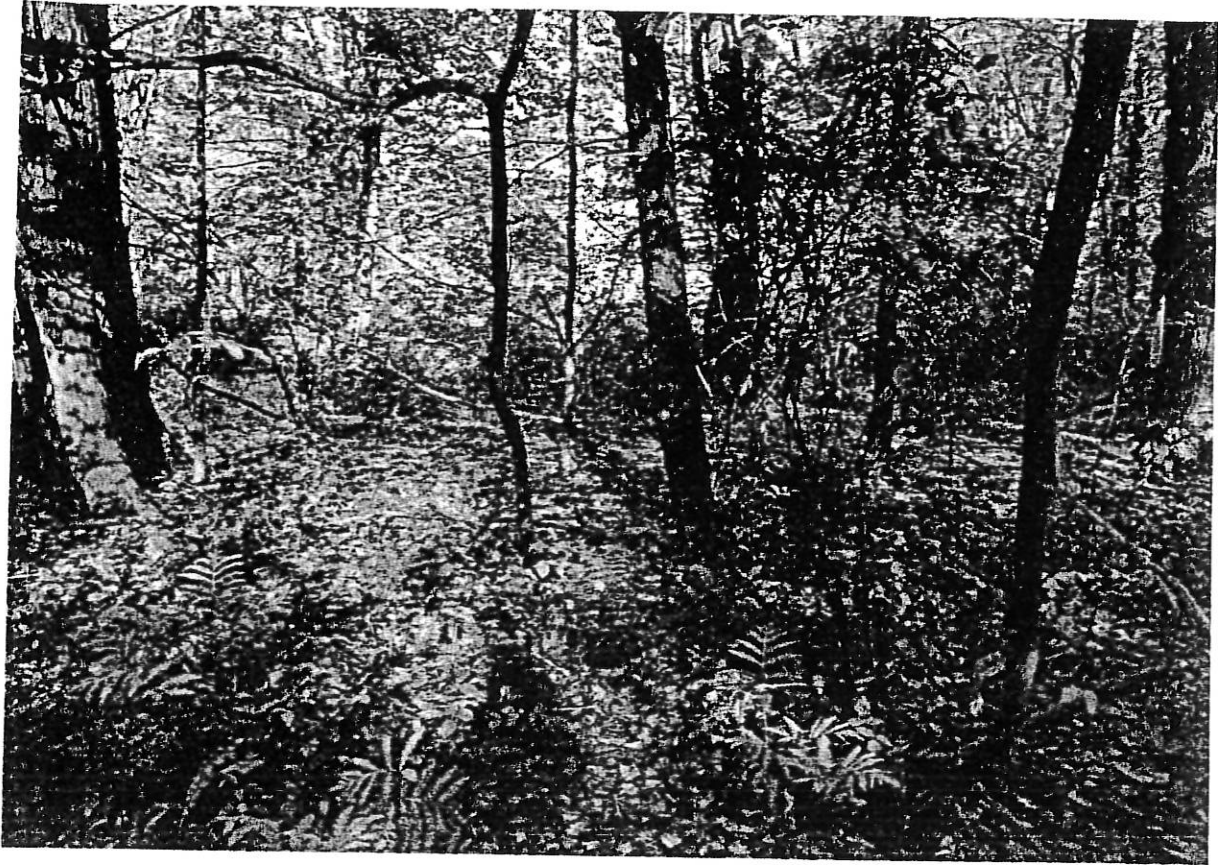
Photo 5



Photo 6



Photo 7





RYE PLANNING BOARD

10 Central Road Rye, NH 03870 (603) 964-9800

web: www.town.rye.nh.us

Notice of Decision

Property Address: Tax Map 17, Lot 34
691 Brackett Road

Applicant: J. Corey Colwell on behalf of the owners

Owner: George B. Ceely and the Estate of Glen F. Ceely
216 Caney Court, Prince Frederick MD 20678
Gary A. Ceely, 2844 Logan Drive, Loveland CO 80538

Engineer: J. Corey Colwell, MSC Civil Engineers & Land Surveyors, Inc.
403-The Hill, PO Box 427 Portsmouth NH 03801

Application: Final Minor two-lot subdivision for 691 Brackett Road, Tax Map 17, Lot 34 for Gary A. Ceely, George B. Ceely and the Estate of Glen F. Ceely in the Single Residence District to subdivide existing lot of 473,916sf (10.88 acres) into 2 lots. Proposed Lot 1 area 392,845sf and proposed lot 2 will have an area of 81,071sf. File 15-09.

Date of Decision: Tuesday, January 12, 2010

Decision: Jurisdiction accepted for Final Minor two-lot subdivision
 Conditionally approved Final Minor two-lot subdivision

1. Add to NHWSPCD Approval number Note 13 on the final plans that lot 2 approved with municipal water supply only (as per NHDES approval #3);
2. Remove proposed well from lot #2;
3. Add a note stating: "Erosion and sediment control plan to be approved by the Building Inspector prior to construction of the house, driveway and septic" on final plans;
4. Well radius easement over lot #2 presented, reviewed by Town Attorney and recorded with the final site plans;
5. Applicant to pay fees incurred with Town Attorney review of application; and
6. Chairman may sign when conditions are met.

1/15/10
Date

Donald A. Cavallaro
Donald A. Cavallaro, Chairman
Rye Planning Board

Date of Filing 1/19/2010

Approvals are valid for 18 months from date of the decision ~ Planning Board Approvals do not include building permits; please check with the Building Inspector's office before any and all construction.

attachment
12-6-17

RICHARD S. SNIERSON
711 BRACKETT RD.
RYE, NH 03870-2202
—
TEL 603-817-1750
FAX 603-431-8181
RSS2@COMCAST.NET

December 5, 2017

Rye Zoning Board of Adjustment
ATTN: K. Reed, Zoning & Planning Administrator
Rye Town Hall
10 Central Rd.
Rye, NH 03870

Re: Case #: 44-2017
Applicant: Joel and Lauren Feid
Owners: Gary A. Ceely, George B. Ceely and Est. of Glen F. Ceely
Property: 0 Brackett Road
Tax Map 17, Lot 34-2, a/k/a Lot #2
Single Residence (SR) Zone

Dear Zoning Board of Adjustment Members:

We – my wife Alexandria and I – own the house and lot (Tax Map 17, Lot 33) which abuts Lot #2, along its Southerly side for 486 feet. We are opposed to the Zoning Board of Adjustment (“ZBA” or “BOA”) granting all or any of (1) the requested variances from the provisions of the Rye Zoning Ordinance and/or (2) the requested relief from the provisions of the Rye Building Code.

I am submitting in advance of the Hearing this letter and the various documents and exhibits discussed in it. At the hearing I would also like to present evidence and testimony, to address the Board and to answer any questions which the ZBA Members may have.

We oppose this BOA Application because the house, leach field and amenities being proposed in the front (SE) corner of Lot #two are not located within the building envelope that the Planning Board (“PX”) specifically approved on Jan. 12, 2010. That envelope was approved as the only “Buildable Area” on Lot #2, at the rear or very back of the lot. That is seen in the PB’s Minutes and other documents in the PB’s Subdivision File.

The "Buildable Area" on Lot #2 is in the Rear -- Not the Front

Mr. & Mrs. Joel Feid ("Applicant") have a P&S Agreement on Lot #2 contingent upon the obtaining of a building permit. Applicant proposes a house in the front of Lot #2. However, on Jan. 12, 2010, at the PB Final Hearing on the Ceelys' Minor Subdivision it was discussed that the house would not be located in the front of Lot #2 and that the "Buildable Area" is located in the rear of Lot #2.

That is very clearly shown in the attached copies of the following official records and documents:

EXHIBITS:

- A Planning Board Minutes for Jan. 12, 2010, pp. 1 and 10 - 14;
- B Portion of Sheet #2 TOPOGRAPHICAL AND SOILS PLAN by MSC, showing "Buildable Area" and "4,000 SF (SLA)" and Test Pits at rear of the lot;
- C Portion of Sheet #3 LOT 2 CONCEPTUAL SITE PLAN by MSC, showing "Buildable Area" and "4,000 SF (SLA)" and Test Pits at rear of the lot;
- D PB Project Summary with Staff Notes and Concerns, Rev. 2009-12-23;
- E Technical Review Committee Minutes ("TRC") 2009-12-29; and
- F Portion of R.C.R.D. Plan #D-36305 showing "Buildable Area at rear of Lot #2, and the NOTES to that Plan.

I have put some black arrows in the left margin on some of the pages of the exhibits to save you time by calling attention to items or points which I feel are particularly relevant.

That a house was and is to be built in the rear of the lot is seen on the Plans presented to the PB in the subdivision process. Some of the Plans are referred to in some of the above documents as Sheet 1, Sheet 2 and/or Sheet 3. Please note that the third sheet, labeled "LOT 2 CONCEPTUAL SITE PLAN," is not designated with a "3" but, because the third sheet was submitted with Sheets 1 & 2, the third sheet was referred to as Sheet 3.

According to the Minutes of the TRC and the PB,, the purpose of Sheet 3 is:

- "To address Attorney Donovan's concern about the building envelope, a house lot is depicted on sheet 3." EXH. E, TRC Mins. 12/29/09 at p. 1; and
- "Sheet 3 demonstrates the building envelope, as requested by the TRC and by Attorney Donovan." EXH. A, PB Mins. Jan. 12, 2010 at p. 11.

The PB discussions during the Final Hearing on the Subdivision are clear that Lot #2 has a stream running through it and that the lot has wetlands in the front, so the house was not to be built in the front. As shown in EXH. A, PB Mins. Jan. 12, 2010 at pp. 10 - 14, a house was to

be built in the rear of Lot #2 in the area designated on the Plans as "BUILDABLE AREA." It was discussed: "The buildable area on Lot #2 is at the very back of the lot. . . [and] "This lot will provide a unique, private setting for the house" at the end of the c. 350-foot driveway. EXH. A, PB Mins. Jan. 12, 2010 at pp. 10 - 11.

The words "private setting" can only refer to the rear of Lot #2. A house located in the front of the lot, setback only 40' from the road would not be in a private setting, This is seen on EXH. J, Applicant's Proposed Conditions Plan, Rev. 11/13/17 ("Applicant's Proposed Plan").

It is noted in the PB Minutes at several places that it was a tight fit, getting everything to fit in the building envelope in the rear of the lot, as shown on Sheet 3. It is "very tight." EXH. A at pp. 12 - 13. "Member Winebaum commented that there are so few streams in Rye. This is a special place and it is a tight fit for the house. It asks for potential problems being so close to the buffer." EXH. A, PB Mins. at p. 13. (At that time in 2010, the wetlands buffer was only 50 feet, not the 75 foot buffer which is required now.)

That was an interesting discussion about the house barely fitting in the rear of the lot and that it was "so close to the [50 foot] buffer." That's mild compared to the Applicant's Proposal which has part of the house with full 8' basement in the buffer and has grading and filling going 25 feet Into the buffer. EXH. J, Applicant's Proposed Plan.

EXH. J, Applicant's Proposed Plan, states in Note #9 that DES approval was issued. Because EXH. J deals with a house in the front, Note #9 implies that DES has issued approval for a septic system in the front of Lot #2. But, that is not the situation. DES has not issued approval of a septic system in the front of Lot #2. In fact, no Application for a septic system in the front of Lot #2 has even been filed with DES by either the owners, or by the Applicant.

The only approval for a septic system on Lot #2 is stated in EXH. F, Plan #D-36305 in Note #13, as follows: "NHDES SUBDIVISION APPROVAL (#SA2009003240) WAS ISSUED ON NOVEMBER 25, 2009." The DES approval in 2009 is for a septic system at the rear of Lot #2, where the house is to be located. That is shown on EXHs. A through F.

Further, when the septic Application was approved by DES in 2009, test pits had been dug only in the rear of Lot #2. Those test pits are shown on the Plans in the PB File and on EXHs. B, C and F. In 2009, no test pits were dug in the front of Lot #2. FN. 1. The 2009 DES Approval mentioned in Note #9 to the Applicant's Proposed Plan, EXH. J, was for the rear of Lot #2. That 2009 DES Approval was not, and is not, for a septic system in the front of the lot.

LDR Sec. 406 LEGAL SIGNIFICANCE OF INFORMATION SUBMITTALS provides:

All plans, drawings, reports and all other information submittals submitted by an applicant or his agent are part of the official record of the application. All representations made on or in such submittals constitute implied conditions of approval which are binding on the applicant and his successors and which are enforceable under Article VIII of these regulations.

The plans and drawings, and information submitted to the PB in 2009 and 2010 for the Minor Subdivision and at the Final Hearing on Jan. 12, 2010 represented that that the house and its leach field are to be located in the rear of Lot #2. The plans, drawings and information given at the Final Hearing thus constitute implied conditions of approval which are binding on the 2010 Applicant, the Ceelys as owners of the lot, and the then-Applicants successors, the Feids or who ever buys Lot #2.

If the triangle-shaped area ("triangle") in the front of the lot had even been seriously considered by the PB for the house and septic system, then "The location of and pertinent data on test pits and percolation test results, . . . an outline of the proposed leach field area" and other information regarding that front triangle would have had to be shown on the Final Plans per LDR Sec. 404.4.A which refers to LDR Sec. 403.1.E for the information which must be shown on the Topographic and Soils Plan for Lot #2. But none of that required information is shown for the front triangle. The 2010 Final Subdivision process did not envision or foresee a house and leach field being constructed in the front of the lot

Lot #2 does Not Meet the 44,000 S.F. Requirements in the
Zoning Ordinance and Land Development Regulations

Lot #2 is shown on Plans in the PB File and on EXH. F, Plan #D-36305, as containing 86,165 square feet ("S.F.") total. Because Lot #2 has a very large number of S.F. of wetlands and wetlands buffer, Lot #2 is in the overlay Wetlands Conservation District per Zoning Ord. Sec. 301. I estimate from the Plans that Lot #2 has less than 20,000 S.F. of area that is not in the wetlands or in the wetlands buffer – less than one-half of the required amount.

That relatively small amount of land, approx. 20,000 S.F., outside the wetlands and the wetlands buffer brings three Town requirements into consideration:

- Rye Land Development Regulations, as Amended Oct. 14, 2014, ("LDR") Sec. 606.3.B, EXH. I, requires that "All lots shall have at least 44,000 square feet of area outside of the Wetland Conservation District." Lot #2 does not meet this requirement.

- Zoning Ord. Sec. **202.13** Upland Soils requires that "All lots shall have at least 44,000 square feet of upland soils, of which at least 30,000 square feet shall be contiguous." This section was adopted 3/14/00, prior to the subdivision. Lot #2 probably does not comply with this requirement.
- LDR Sec. **603.2.B** requires that "every lot shall have at least 44,000 square feet of non-wetland soil, as required by Section 606.3.B." EXH. I. Lot #2 does not meet this requirement. Please see Sheet 2, TOPOGRAPHICAL AND SOILS PLAN, which is in the PB File and will be presented at the Hearing, and see EXH. H, HIS Soil Types.

Those three requirements are shown on the Area Requirements Table, EXH. L. But, Not one of those three requirements are indicated on Applicant's Proposed Plan (EXH. J) under NOTE #4 ZONE REQUIREMENTS, nor elsewhere, on that Plan. However, Lot #2 is subject to those three requirements and Lot #2 cannot meet them.

A house in the front of Lot #2 also appears to not comply with other sections of the LDR. For example, Section 606 STANDARDS FOR THE PRESERVATION OF NATURAL FEATURES AND THE ENVIRONMENT HAS PROVISIONS:

- LDR Sec. **606.1** protects streams, trees and wetlands. There is a stream and wetlands running through Lot #2. Also, the proposal would result in the clear cutting of trees in addition to brush and plants in an area of about 10,000 S.F.
- LDR Sec. **606.3.A** provides "Where a subdivision has already been approved and recorded, but where the land remains essentially in its natural state, such subdivision plans are hereby null and void for that area lying in the Wetland Conservation District and shall be re-subdivided only in accordance with Paragraph B below."

Lot #2 has remained essentially in its natural state. No improvements to it were made after the 2010 subdivision was approved. Therefore, subdivision Plan #D-36305 for Lot #2 is null and void for the areas of Lot #2 which are in the Wetlands Conservation District. Those areas comprise about 75% of Lot #2.

Furthermore, the recorded approval for Lot #2 can be revoked. LDR **303.4.L** provides:

"Revocation of Recorded Approval: The Planning Board may revoke its approval of approved and recorded plans in accordance with the provisions of RSA 676:4-a. The Board may also revoke approved, unrecorded plans and conditionally approved plans in the same manner. Reasons for revocation would include, but not be limited to, projects which have been built contrary to approved plans (or conditions attached to approval); projects in which the surety has lapsed; and projects which have not been built and which have not vested." (emphasis added.)

Lot#2 remains in its natural state since it was subdivided in 2010. It has not been improved or built upon. Lot #2 has not vested under the LDRs nor under the N.H. statutes. See LDR 303.4.L, RSA 676:4-a and RSA 674:39.

– LDR Sec. 603.3.C requires that the bottom of the leaching field “shall be a minimum of four (4) feet above the SHWT.” There is a high water table under Lot #2 and the nearby area. Yet, the Applicant requests that the bottom of his leach field be only 2 feet above the SHWT. A four (4) foot minimum above the SHWT is also required by Bldg. Code Sec. 7.9.3.2.

Other Issues

1. In addition to being in the Wetlands Conservation District, Lot #2 is also in the Parsons Creek Watershed, EXH. K. Since 2004 the Town has been, and continues, expending funds to find and clean up the sources of pollution in that watershed.

2. The Building Code provides:

“7.9.4 Prohibited Conditions: The following are considered unsuitable for the disposal of septic and effluent and may not be remedied by the addition of fill, blasting excavating or other methods.

7.9.4.1 The Wetlands of Section 301.7 of the Zoning Ordinance and all land within 100 feet of these protected wetlands.”

But, as shown on EXH. J, Applicant’s Proposed Plan, the leachfield is next to the 75 foot Wetlands Buffer. So, the proposed leachfield will be within 100 feet of the protected wetlands and stream and is in violation of Sec. 7.9.4.1.

3. Because Applicant seeks to construct his house and leachfield in the front, neither Applicant’s Proposed Plan, EXH. J, nor his Building Permit Application “is in compliance with all conditions of planning board approval, whether express or implied. [Therefore] no building permit application shall be approved [now] unless it is in compliance with such [2010] approvals or conditions.” Rye Bldg. Code Sec. 3.3.

As discussed above, a house in the front does not comply with the PB’s specific approval of a house in the rear of Lot #2. A building permit for the proposed house in the front of Lot #2 cannot be approved or granted by the Building Inspector or by the ZBA, because the proposed house is not in compliance with all conditions of the 2010 PB approval, whether express or implied. Rye Bldg. Code Sec. 3.3.

4. The Applicant is asking the ZBA to exceed its statutory power and authority. However, as the ZBA knows, the ZBA can only grant variances and relief as specified in its statutory power and authority as granted to it in the state statutes pertaining to ZBAs/BOAs, including but not

limited to RSA Chapters 673 - 677. Just as the PB cannot grant variances from the Zoning Ordinance (LDR Sec. 601.1), the ZBA cannot change a subdivision approval issued by the PB. Only the PB can do that.

The RCC

The RCC has set forth in its two letters various factors which need to be taken into account regarding the water and the environment. I started to raise, but the RCC did not want to get into, the requirements of the LDRs (which are discussed above). The RCC said that I should take that up with the ZBA. To me, the RCC's Second Letter says IF the lot is to be developed, that building in the front is the lesser of the two evils. But that statement from the RCC cannot, of course, override the PB's approval for building just in the rear of the lot.

Conclusion

In effect, the Applicant wants the ZBA to make the front corner of Lot #2 a "buildable area." But, it is the PB which has been granted statutory authority regarding the subdivision of land; and the Rye PB approved the subdivision of Lot #2 as a house lot with the "buildable area" for a house and leachfield located in the rear of Lot #2. Applicant wants the ZBA to change the subdivision approval granted by the PB on Jan. 12, 2010 from the rear of Lot #2 to the front of the lot. The ZBA cannot authorize a house to be built in the front of the lot after the PB made it clear on Jan 12, 2010 that it was approving the subdivision with a house located in the rear of Lot #2. See EXH. A, PB Mins. and Rye Bldg. Code Sec. 3.3.

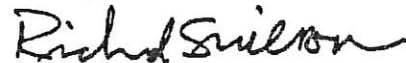
The Applicant's agent said at the Oct 19, 2017 RCC Meeting that DES Approval is for a lot in general, not for the specific location where the septic system is shown on the plan filed with the DES Septic System Application Form. But, it is my understanding from having gone through the process a few years ago, that after one gets DES Approval for a septic system, his installer installs the septic system (tank and the leach field) in the location shown on the Plan submitted to DES, not elsewhere on the lot, certainly not hundreds of feet away. The Ceelys, as owners of Lot #2, incurred a lot of expense in 2009 and 2010 to obtain DES approval for a septic system in the rear of Lot #2 and to demonstrate to the TRC and the PB that a house would fit in the building envelope at the rear of the lot. I do not think the PB had the Ceelys go through that Minor Subdivision Approval process as a charade, and that over 7 years later someone could claim that a house and leachfield have been approved both by DES and by the PB to be built in the front of Lot #2

A review of all of the Minutes, Plans and documents in the 210 PB Subdivision File, shows that the PB specifically gave approval for a "Buildable Area" at the rear of Lot #2. The P.B. discussed, but did not approve a house being built in the front corner of the lot -- where a house is now being proposed by the Applicant.

We request that the ZBA deny the Applicant's appeal(s) and request(s) for relief. We request that the ZBA rule that, because the Application for Building Permit proposes a house in the front (SE) corner of Lot #2, the ZBA cannot grant the requested variances from the Zoning Ordinance or the requested relief from the Building Code. The main reason is that the front corner of the lot, where the Applicant seeks to build a house, is not the "Buildable Area" of Lot #2 as approved by the PB on Jan. 12, 2010 and as shown on recorded Subdivision Plan #D-36305. Many other reasons for denying the variances and the relief sought are discussed above.

We thank you very much for considering our opposition.

Sincerely,



Exhibits Attached, but not listed on p. 2:

- G Present and Future, Coastal Hazards, Rye Master Plan, Sec. 3.3 Present and Future
- H HIS Soil Types
- I Land Development Regulations Oct. 14, 2014 (excerpts) with RSA 676:4-a and 674:39
- J Applicant's Proposed Conditions Plan, Rev. 11/13/17
- K Parson's Creek, Citizens Guide to Bacteria in Surface Waters, Rye, NH
- L Area Requirements Table

Cc: R. Timothy Phoenix
J. Corey Colwell
Joel and Lauren Feid

FN. 1 I know that because one day in 2009 I heard a backhoe working on the vacant land to the North of our house. After walking over to see what was going on, I talked with Greg Bauer, who was digging test pits back in the rear of what is now known as Lot #2. Coincidentally, a few years earlier Greg had dug the test pits for my new septic system, so I knew him. Greg told me that the Ceelys were planning to subdivide off a lot between my land and the Ceely farmhouse and that the new house would be located in the rear of the new lot, and that is why he was digging there,

EXH.
A



Rye Planning Board

Tuesday, January 12, 2010

Meeting Held at the Town Hall Meeting Room 7:00 P.M

MINUTES OF THE MEETING

Members Present: Chairman Donald Cavallaro, Vice-Chair Mel Low, Clerk Martin Zivic, Selectmen's Rep. Priscilla Jenness, Mark Galvin, Patricia Weathersby, Samuel Winebaum (by phone), Alternate Jaci Grote and Alternate Robert Brown (joined the meeting at 7:05 p.m.).

Also Present: Town Attorney Michael Donovan and Planning Administrator Kimberly Reed.

Absent: Alternate William Zechel.

I. Call to order and Pledge of Allegiance

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

Member Winebaum sent a request to the Board to be allowed to participate in the meeting via telephone, as he is in Utah on business.

The Board Members agreed to allow Member Winebaum to join the meeting by phone.

Motion by Mark Galvin to allow participation, in the meeting, by Samuel Winebaum via telephone. Seconded by Patricia Weathersby.

Vice-Chair Low suggested that it might be beneficial to seat an Alternate for the conceptual, since Member Winebaum is unable to see it.

Member Weathersby commented that the Board does not vote on a conceptual.

Vice-Chair Low responded that there are opinions.

Member Winebaum stated that he would like to hear Attorney Donovan's explanation of public safety access versus maintenance access.

Attorney Donovan replied that he was not present at the December 8th meeting. These are two different types of easements.

Member Winebaum asked how the land would be monitored.

Attorney Donovan stated that under Fire Fighting Statues an easement is not needed. Fire Personnel can go where they need to in an emergency situation.

Member Weathersby clarified for Member Winebaum that the maintenance was talked about at the December 8th meeting. The Conservation Commission said that there would be monitoring by air. Although, the Planning Board wishes that there would be an easement, it could not be required. The Conservation Commission is satisfied with monitoring it in that fashion. The Board's hands are a bit tied.

Mr. Raynes read from a letter from the Conservation Commission Attorney (sic).

- Please see attached letter: Douglass Bordewieck
Dated: January 4, 2010
RE: Splaine Property on Spring Lane

Chairman Cavallaro asked for further public comments. Hearing none he closed the Public Hearing.

Member Weathersby pointed out that the NHDES approval is needed on the final plan.

Motion by Mel Low to approve the application and it may be signed by the Chairman when the NHDES approval is added to the plans. Seconded by Mark Galvin. Vote 6-1. Opposed Samuel Winebaum.

The Board had a discussion on Easements.

- • Final Minor two-lot subdivision for 691 Brackett Road, Tax Map 17, Lot 34 for Gary A. Ceely, George B. Ceely and the Estate of Glen F. Ceely in the Single Residence District to subdivide existing lot of 473,916sf (10.88 acres) into 2 lots. Proposed Lot 1 area 392,845sf and proposed lot 2 will have an area of 81,071sf. File 15-09.

→ Corey Colwell, MSC Civil Engineers Land Surveyors, spoke for the Applicant. He stated that the proposal before the Board is a two lot subdivision, for property located at 691 Brackett Road. They are proposing to create a new lot, a 1.9 acre parcel, on the east side of the property. The existing farm house would remain on an 8.9 acre house lot. The new lot, (lot #2), would have approximately 287-ft of frontage along Brackett Road. He pointed out that also on the lot is a seasonal stream. The buildable area on lot #2 is at the very back of the lot and is 9,381 square feet in size. ☆☆

→ He explained that there is a sheet entitled Lot #2 Conceptual Plan, which was submitted in the packet to the Board. This demonstrates where on lot #2 driveway, septic, well and house could be placed. He continued that the driveway, for this lot, is approximately 350-ft in length from Brackett Road. As directed by the Technical Review Committee (TRC), they have provided a turnaround for emergency vehicles. He stated that test pits were excavated and witnessed on both lots. This lot will provide a ☆

→ unique, private setting for the house. ☆☆☆

Mr. Colwell stated that the existing farm house will remain on the 8.9 acre parcel. This lot would have 850-ft of frontage along Brackett Road. He pointed out the wetlands on the map. He commented that under the current Zoning and Land Development Regulations this lot could no longer be subdivided. He pointed out the existing well and septic system on the lot. They did excavate test pits to the back and the purpose was to demonstrate that a reserve septic system or leaching area could go on this lot. He continued that they do not anticipate having to use that. If this system was to fail it would most likely be rebuilt in the same area. However, the State and Town regulations require that there is a separate reserve area.

He further stated that a subdivision has been approved by the NH Department of Environmental Services (NHDES) and indicated in note 13. There are three drawings which support this application. He explained that Sheet 1 is the drawing that would be recorded at the registry. Sheet 2 contains information such as, topography, high intensity soil survey, test pits, perk tests and suitable leaching area. Sheet 3 demonstrates the building envelope, as requested by the TRC and Attorney Donovan. ☆☆

Chairman Cavallaro stated that the plan was to have Town water on the parcel. He asked why it shows that both are available.

Mr. Colwell replied that they are demonstrating that a well could fit if they choose not to go with Town water. There is a letter that states that Town water is available.

Chairman Cavallaro asked if the existing house was on Town water.

Mr. Colwell replied that it is his understanding that the existing house is on a well, however, it has the capability to go to Town water.

Chairman Cavallaro pointed out that the well's radius, which is a 'Well Protection Radius', goes into the street. This was talked about at the TRC, the issues of it being close to the driveway.

The Board had a discussion about the well.

→ Attorney Donovan stated that they have moved the driveway to comply with the 10-ft. requirement.

Mr. Colwell explained that the original application had a driveway that was much further away. The Building Inspector raised a concern about an elevation in front of the farm house. They did not have safe site distance, only a couple of hundred feet. Moving the driveway closer to the farm house, about 8 to 10 feet, the site distance came up over 400. It is a much better location for safe site distance. It is really the only place a driveway could go. Since the well already goes into Brackett Road, with no issues, there is certainly going to be more salt laid down on Brackett Road than in this driveway. He continued that the State says that there cannot be any part of a septic system within 75-ft of that well radius. The soil acts as a filter and that far away, salt on a driveway, would have no effect on that well.

Member Winebaum asked if the existing septic tank was within the existing well radius.

Mr. Colwell explained that the State deems that acceptable because it is pre-1989. It is grandfathered.

Member Winebaum asked for clarification on the DES approval where it states Town water for lot #2. This would say "no wells on lot #2".

Chairman Cavallaro explained that this was brought up at the TRC. The subdivision requires the ability to have a well on each property. There is also a letter stating that water could be provided.

Member Weathersby asked if they could require both properties to be on Town water. Her concern is with the health and safety of the residents who will live in that house.

Attorney Donovan stated that Member Winebaum's point is correct. The third condition of the subdivision approval from the DES is that lot #2 is approved with a municipal water supply only.

→ Member Winebaum asked if this raises issues with getting water down the long driveway. He asked if they would be able to get water pressure to the house. *

→ Mr. Colwell replied that this has always been their intent to have that lot on Town water. There is a letter stating that the Town would supply water to the house. It was demonstrated to the Town how long the driveway would be.

Chairman Cavallaro read a letter from neighbors in support of the subdivision.

- Please see attached letter: William & Catherine Graham
Received: January 7, 2010

Attorney Donovan stated that to be consistent with the State approval they should take the well off the plan.

Chairman Cavallaro asked if this was required.

Mr. Colwell stated that he interpreted that it was required that it needed to be demonstrated that a well and septic can be on this lot. It seems to be clear that it is not needed if the lot has Town water.

Chairman Cavallaro stated that it would look cleaner. Also, it appears that the State does not want it. This should be taken off.

Member Zivic agreed.

Attorney Donovan stated that the NHDES approval indicates that construction may involve dredging upon the wetland and may have to get a permit. The construction activity may require a wetlands permit.

→ Member Winebaum stated that he has been by the property several times, in November and December, and each time there was a flowing stream, it was never dry. In the letter and documentation the classification was changed by Gove Environmental, from a lower perennial to an intermittent stream. He continues that in looking at the topographical map he sees a cross hatched area that is a straight line. He questions the Gove's work. *

Member Winebaum read parts of the Gove letter from November 6, 2009.

→ Member Winebaum stated that the building envelope, the garage and the four bedroom house, all touch the wetland buffer. There should be no encroachment. He does not see how the buffer could not be encroached on. It is very tight. **

→ Mr. Colwell explained that in 1997 there was wetland delineation done on the entire property. He has supplied a letter, from NH Soils, indicating that this is a "seasonal stream". He continued that Gove first went out to the property in March. They suspected that this may be a intermittent or perennial stream. Gove went back to the property, in May, found that this is a seasonal stream and they wrote a letter in support of NH Soils' findings. He pointed out that there should be two letters in the file, from two independent Soil Scientists, indicating that this is a seasonal stream. He continued that in regards to the building envelope, it is a very tight. The building goes very close to the wetlands buffer in the back. They are just trying to demonstrate that a building and a septic can fit. He pointed out on the map where the building could go. Sheet 3 is a demonstration that everything will fit. ★

Chairman Cavallaro asked if another note should be added in regards to erosion control.

→ Member Winebaum commented that there are so few streams in Rye. This is a special place and it is a tight fit for the house. It asks for potential problems being so close to the buffer. ★ ★

Chairman Cavallaro stated that if the Board asks for a sediment or erosion control plan, during construction, this will hopefully keep disturbances away.

The Board discussed a possible site walk.

Chairman Cavallaro opened discussion to the public at 8:26 p.m.

Asking for further comments or discussion from the public and hearing none, Chairman Cavallaro closed the public hearing at 8:27 p.m.

Chairman Cavallaro summarized that the lot #2 well will be removed from designation. A note will be added, concerning an erosion or sediment control plan during construction, to protect the wetlands buffer.

There was discussion of a site walk.

Member Weathersby commented that the wetlands have all been delineated by the Soil Scientists. The Board has that information.

The Members agreed a site walk was not needed.

Chairman Cavallaro asked if this should have OEST review.

Member Low stated that OEST is used for Town roads.

Member Zivic commented that he does not see a reason for it.

Member Low replied that the only reason would be if the Conservation Commission wanted to do a site walk.

Chairman Cavallaro called for a motion to accept jurisdiction.

Motion by Mel Low to accept jurisdiction. Seconded by Patricia Weathersby. All in favor.

Member Zivic pointed out that there are two things to be followed up on.

Chairman Cavallaro stated removing the lot #2 Well Radius, which is consistent with the NHDES. Also, adding a sediment and erosion control plan, during construction, to protect the wetlands buffer. The Chairman would sign when those are completed.

Member Zivic asked if there was going to be a requirement of Town water.

Attorney Donovan stated that this could be added to Note 13 on page 2, regarding DES approval. It could say Town water required for lot #2.

Member Weathersby stated that she would like to see that for lot #1 also, however, the Board may be overstepping.

Attorney Donovan asked if the Board would want to say that the Well Radius Easement over lot #2 be presented and recorded with the plan.

Mrs. Reed asked if it could be presented and reviewed by Town Counsel.

Attorney Donovan agreed. He summarized that the condition would be; Well Easement on lot #2 reviewed and approved by Town Counsel and recorded with plan. He pointed out that the well has to be removed from both Sheets 2 and 3.

→ Member Winebaum stated that the driveway is 300-ft and the erosion control needs to cover the driveway. The wetlands buffer runs all along the driveway. A

Attorney Donovan stated that it could be noted that an erosion and sedimentation control plan shall be approved by the Building Inspector prior to construction of the house, driveway and septic system. Basically it would be whatever the Building Inspector required.

Mrs. Reed summarized the conditions:

- Note 3 – per NHDES subdivision regulation take well off lot #2
- Note – Erosion and Sediment Control
- Well Radius Easement over lot #2 reviewed and approved by Town Counsel and recorded with plan.
- Note 13 – Both sheet 1 and sheet 2
- “Erosion and Sediment Plan to be approved by the Building Inspector Prior to construction of house, driveway and septic.”
- Applicant to pay Attorney fees.
- Chairman to sign when conditions have been met.

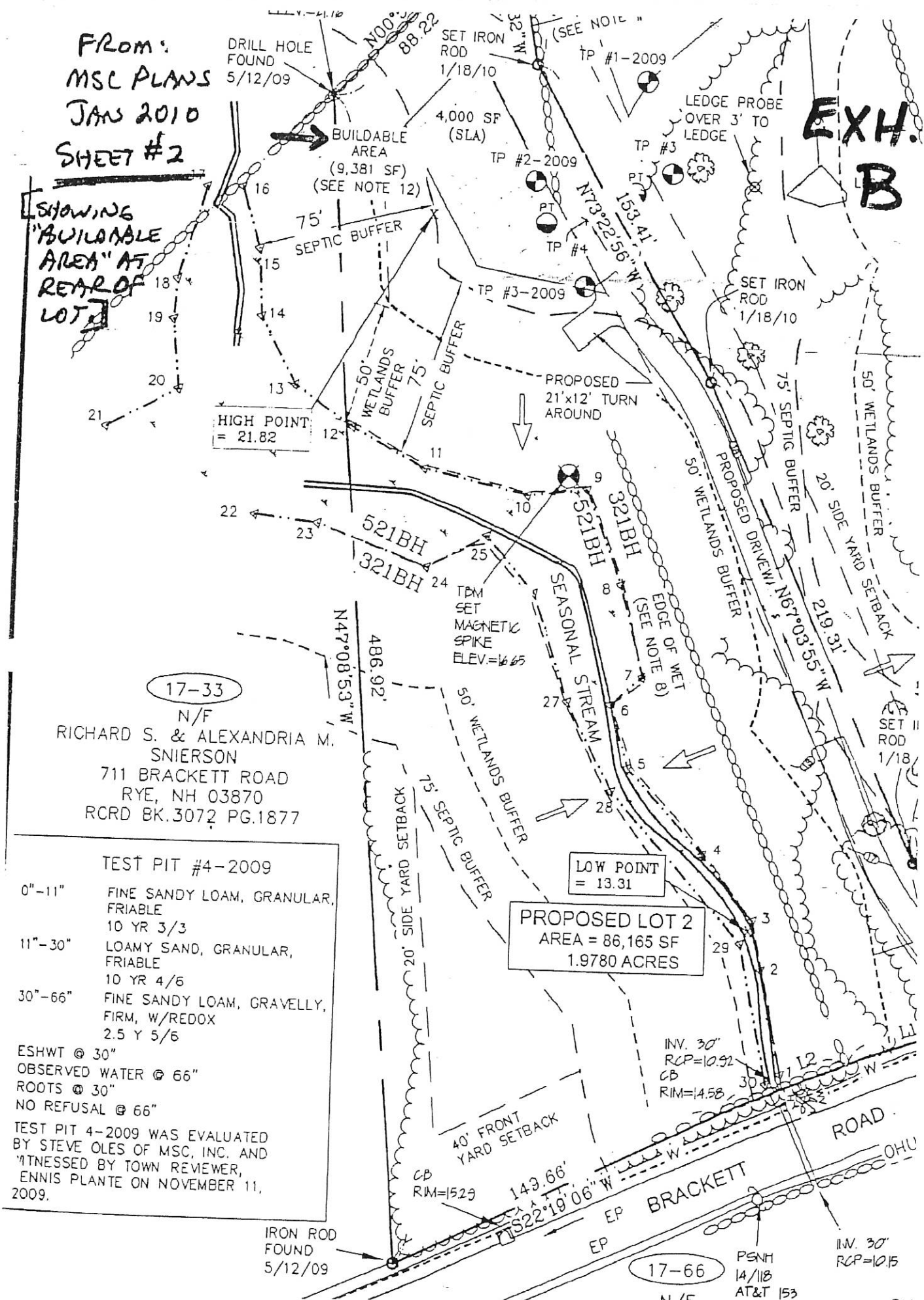
Chairman Cavallaro called for a motion.

Motion by Samuel Winebaum to approve the application for the 691 Brackett Road subdivision with the conditions as stated. Seconded by Mark Galvin. All in favor.

FROM:
MSC PLANS
JAN 2010
SHEET #2

SHOWING
"BUILDABLE
AREA" AT
REAR OF
LOT

EXH.
B



HIGH POINT
= 21.82

LOW POINT
= 13.31

PROPOSED LOT 2
AREA = 86,165 SF
1.9780 ACRES

17-33
N/F
RICHARD S. & ALEXANDRIA M. SNIERSON
711 BRACKETT ROAD
RYE, NH 03870
RCRD BK.3072 PG.1877

TEST PIT #4-2009
0"-11" FINE SANDY LOAM, GRANULAR, FRIABLE
10 YR 3/3
11"-30" LOAMY SAND, GRANULAR, FRIABLE
10 YR 4/6
30"-66" FINE SANDY LOAM, GRAVELLY, FIRM, W/REDOX
2.5 Y 5/6

ESHWT @ 30"
OBSERVED WATER @ 66"
ROOTS @ 30"
NO REFUSAL @ 66"

TEST PIT 4-2009 WAS EVALUATED BY STEVE OLES OF MSC, INC. AND WITNESSED BY TOWN REVIEWER, ENNIS PLANTE ON NOVEMBER 11, 2009.

IRON ROD FOUND
5/12/09

17-66
N/F

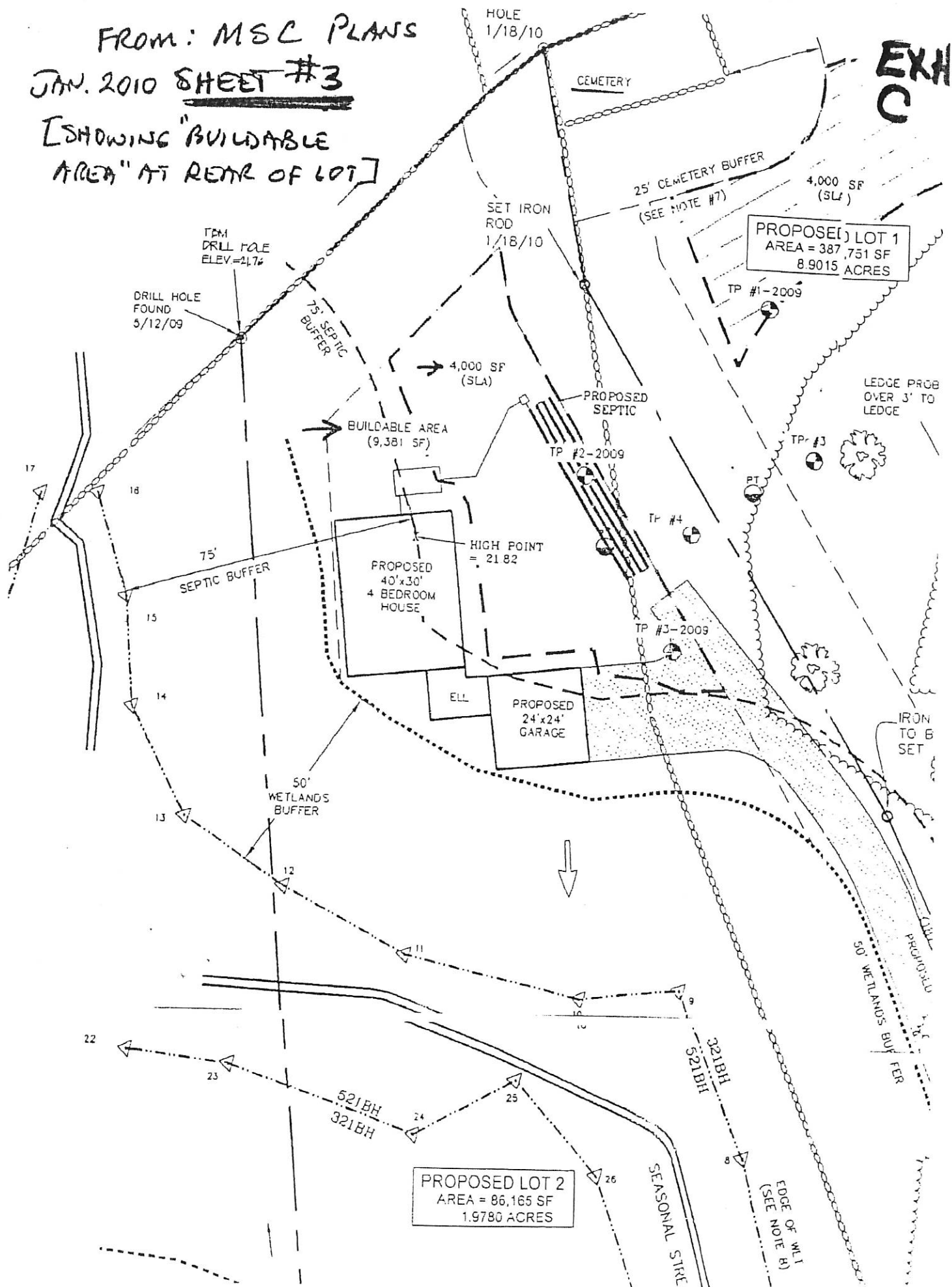
PSNH
14/118
AT&T 153

INV. 30'
RCP=10.15

FROM: MSC PLANS
 JAN. 2010 SHEET #3

EXH
 C

[SHOWING "BUILDABLE
 AREA" AT REAR OF LOT]



PROPOSED LOT 1
 AREA = 387,751 SF
 8.9015 ACRES

PROPOSED LOT 2
 AREA = 86,165 SF
 1.9780 ACRES

PROPOSED
 40'x30'
 4 BEDROOM
 HOUSE

PROPOSED
 24'x24'
 GARAGE

PROPOSED
 SEPTIC

BUILDABLE AREA
 (9,381 SF)

HIGH POINT
 = 21.82

TPM
 DRILL HOLE
 ELEV. = 21.76

DRILL HOLE
 FOUND
 5/12/09

HOLE
 1/18/10

CEMETERY

25' CEMETERY BUFFER
 (SEE NOTE #7)

4,000 SF
 (SLA)

TP #1-2009

SET IRON
 ROD
 1/18/10

75' SEPTIC
 BUFFER

4,000 SF
 (SLA)

LEDGE PROGB
 OVER 3' TO
 LEDGE

TP #3

75'
 SEPTIC BUFFER

TP #4

TP #3-2009

IRON
 TO B
 SET

50'
 WETLANDS
 BUFFER

50' WETLANDS BUFFER

SEASONAL STREET

EDGE OF M/L 1
 (SEE NOTE B)

521BH
 H8129

321BH
 H3218H

22

23

24

25

26

17

18

15

14

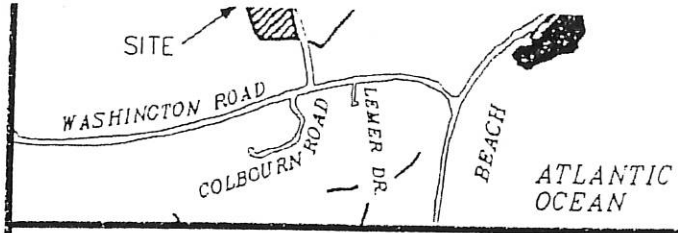
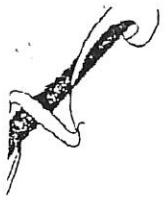
13

12

11

9

8



LOCATION PLAN



NOTES:

1. THE PARCEL IS LOCATED IN THE SINGLE RESIDENCE DISTRICT AND IS SHOWN ON THE TOWN OF RYE ASSESSORS MAP 17 AS LOT 34.
2. THE PARCEL IS LOCATED IN ZONE X (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN), IN FLOOD ZONE X (AREAS OF 0.2% ANNUAL CHANCE FLOOD) AND FLOOD HAZARD ZONE AE (EL.9) AS SHOWN ON THE FLOOD HAZARD MAP FOR THE TOWN OF RYE, COMMUNITY PANEL NUMBER J3013C0288E, EFFECTIVE DATE: MAY 17, 2005.
3. OWNERS OF RECORD: GARY A. CEELY, GEORGE B. CEELY & THE ESTATE OF GLEN F. CEELY
216 CANEY COURT
PRINCE FREDERICK, MD 20678
RCRD BK.#5052 PG #1558
4. ZONE REQUIREMENTS:

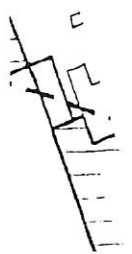
MIN. LOT AREA	66,000 S.F.
MIN. FRONTAGE	200'
MIN. DEPTH	150'
SETBACKS: FRONT	40'
SIDE:	20'
REAR:	30' OR 1/4 OF THE DEPTH OF THE LOT, WHICHEVER IS THE LESS
MAX BUILDING COVERAGE:	15%
MAX BUILDING HEIGHT:	35'
5. TOTAL PARCEL AREA PRIOR TO SUBDIVISION: 473,918 S.F.
10.88 ACRES
6. IRON RODS AND/OR DRILL HOLES WERE SET AT ALL NEWLY CREATED LOT CORNERS ON 01/18/2010.
7. SEE RSA 289.3 FOR CEMETERY AND BURIAL GROUNDS RESTRICTIONS AND REQUIREMENTS.
8. WETLAND DELINEATION WAS DONE BY GOVE ENVIRONMENTAL SERVICES, INC. IN MAY 2009 AND FIELD LOCATED BY MSC CIVIL ENGINEERS & LAND SURVEYORS, INC. THE WETLANDS WERE DELINEATED IN ACCORDANCE WITH THE 1987 ARMY CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL. THESE WETLANDS ALSO REPRESENT POORLY DRAINED SOILS.
9. SEE RSA 438-B, COMPREHENSIVE SHORELAND PROTECTION ACT FOR RESTRICTIONS WITHIN THE 250 SHORELAND PROTECTION BUFFER.
10. TOWN WATER IS AVAILABLE, THEREFORE NO ONSITE WELL IS NECESSARY FOR PROPOSED LOT 2.
11. CONTOURS & ELEVATIONS SHOWN HEREON ARE BASED ON THE NATIONAL GEODETIC VERTICAL DATUM (NGVD) OF 1929.
- 12. THE BUILDABLE AREA SHOWN HEREON IS FOR BUILDINGS ONLY. IT DOES NOT DEPICT AREAS SUITABLE FOR SEPTIC SYSTEMS. SEE SHEET 2 OF 2 ON FILE WITH THE TOWN FOR AREAS SUITABLE FOR SEPTIC SYSTEMS.
13. NHDES SUBDIVISION APPROVAL (#SA2009003240) WAS ISSUED ON NOVEMBER 25, 2009. LOT 2 APPROVED WITH MUNICIPAL WATER SUPPLY ONLY.
14. EROSION AND SEDIMENT CONTROL PLAN TO BE APPROVED BY THE BUILDING INSPECTOR PRIOR TO CONSTRUCTION OF THE HOUSE, DRIVEWAY AND SEPTIC.

LOT 2 CONCEPTUAL SITE PLAN

DESCRIPTION

REV.	DATE

GEORGE B. CEELY
 CEELY



EXH.
D

Town of Rye, New Hampshire - Planning Board Meeting Project Summary

Owner: Gary A. Ceely
2844 Logan Drive, Loveland CO 80538

Gary A. Ceely, George B. Ceely & the Estate of Glen F. Ceely
216 Caney Court, Prince Frederick MD 20678

Engineers: J. Corey Colwell, MSC Civil Engineers & Land Surveyors, Inc.
403-The Hill, PO Box 427 Portsmouth NH 03801

Project Type: Minor Subdivision
Tax Map: Tax Map 17, Lot 34

Zoning: Single Residence Zone
Present Use: Single Residence with barn

Project Proposal: The applicant(s) seek to subdivide the existing 10.88 acre lot into two (2) lots having proposed lot area 392,845sf and the other proposed lot 2 with 81,071sf. File 15-09.

Waivers Requested: None

Items included in the Application:

1. Application with fee paid 10/1/09
2. Abutter's list - Provided
3. Provided 6 sets of full plans plus 11 x 17 -revised set of plans 12/8/09
4. Letter from Water District
5. Received NHDES Subdivision approval on Nov 25 09 see Note 13 on Plans

Zoning Requirements.

SECTION 203 Single Residence District

- 203.1 Permitted Uses:** In a SR District the following uses are permitted:
- A. Single family detached dwelling

SECTION 301 WETLANDS CONSERVATION DISTRICT. (Adopted 1977)

301.1 Definition of District: The Wetlands Conservation District comprises any and all of the following areas within the Town of Rye: (Rev. 1995)

- A. Tidal marshes, fresh water marshes, and streams and ponds.

Land Development Requirements.

Section 201.1 B. - This application meets the minor subdivision regulations since it is not more than 3 buildable lots which do not require any street construction.

Section 302 - No preliminary reviews are required for minor subdivisions.

691 Brackett Rd, Tax Map 17, Lot 34 - Ceely 2 Lot Subdivision Staff Review. File 015-09 - Revised 12/23/09

Section 404.2


- A. Applicant provided the required number of submittals
- B. Applicant provided an Abutters list and labels
- C. Applicant provided an inspection permission
- D. Applicant submitted a PLAT and if there are any changes during the Planning Board hearing will provide a final PLAT that meets:
 - a. RCRD requirements
 - b. Location of lot line, boundary line and street
 - c. Locus Diagram
 - d. Existing street name
 - e. The current house number. Once the subdivision is approved the second lot will be assigned a house number and tax map and lot # by the assessor
 - f. All monuments are indicated on the plans
 - g. Limitations by the Wetland and Septic buffers. - The Conservation Commission would like a site walk on the site.

Section 404.4

In addition to the above, S 404.2:

- A. Topographic and soils are listed on the plans Sheet 2 of 2
- B. Received NHWSPCD
- C. There is a current house on lot 1 with Rye Water

→ **Staff Report- Staff has concerns with this Application:**

- 1. Driveway on Sheet 2 in the well radius - the turn around has been added, it is in the building envelope and will the stone wall be removed? It is a very tight fit.
- 2. SLA pulled out of the 20ft set back and still wonder if there is enough room for a buildable house, although shown on sheet 3, there is not much room for error and protection of the resources should be put into place. 
- 3. The applicant has gone back and made changes to accommodate the Building Inspector's concerns and provided the Board with the NHDES Subdivision Approval.
- 4. Staff recommends accepting Jurisdiction over the application and scheduling a site walk of the proposed sites and invite the Conservation Commission who have asked to be included if there is a site walk.

EXH.
E



Rye Planning Board

Rye Town Hall, 10 Central Road, Rye, NH 03870 (603) 964-9800
web: www.town.rye.nh.us

Technical Review Committee

Members Present: Donald Cavallaro, Chairman; Mel Low, Vice-Chair; and Martin Zivic.
Also Present: Kimberly Reed P&Z Administrator

Chairman Cavallaro called the Technical Review Committee meeting to order and the Pledge of Allegiance.

Final Minor two-lot subdivision for 691 Brackett Road, Tax Map 17, Lot 34 for Gary A. Ceely, George B. Ceely and the Estate of Glen F. Ceely in the Single Residence District to subdivide existing lot of 473,916sf (10.88 acres) into 2 lots. Proposed Lot 1 area 392,845sf and proposed lot 2 will have an area of 81,071sf. File 15-09.

Chairman Cavallaro restated the purpose of the Technical Review and that this applicant has been before the board before and would like the engineer to walk through the changes to the application and the responses to the Building Inspector and Town Attorney's concern.

→ Corey Colwell from MSC Engineering spoke on behalf of the application. He stated that they had indeed addressed the concerns of both the Town Attorney and the Building Inspector. He pointed to the driveway turnaround in the gray area and it is also shown in a 20 scale on sheet 3. The driveway will be about 11 +/- feet wide and it has been moved for better site distance and snow removal will not be an issue since it is on lot 1, 10ft off the property line which it was previously ½ ft. The driveway will not need to be elevated and that is depicted on sheet 2 of 3 which shows the proposed grades, very little is necessary. The December 17, 2009 letter addresses the septic concerns. The state will allow them to build an in-kind if there is a failure and all this is shown on Sheet 2. Also, the NHDES subdivision approval came through and it is note 13. To address Attorney Donovan's concern about the building envelope, a house lot is depicted on sheet 3.

Chairman Cavallaro asked if it would be Town water or well.

Mr. Colwell stated that they will be able to get town water, see letter. Also, the well is an option if they chose. Both will work on this site.

Mel Low asked if the house has been designed.

Mr. Colwell stated that they designed the idea and possible location but not the house.

Mr. Low asked if the purchase of the lot would be limited to that.

Mr. Colwell stated it is a typical house lot.

Chairman Cavallaro inquired about the turnaround and wondered about ambulance and fire.

Mr. Colwell stated a truck could pull right up to the garage.

Chairman Cavallaro questioned the impervious pavement and the slope.

Mr. Colwell stated it is on grade and drains to the wetlands and that Rye has a 50ft wetlands buffer which reduces runoff.

Chairman Cavallaro talked about the septic and possible need for a site walk and that the Conservation Commission would like to see a site walk. He looked at the well radius and no salt zone.

Mr. Colwell stated the tip of the driveway goes into the well radius.

Chairman Cavallaro recommended it for the January 12th Planning Board meeting and Mr. Zivic and Mr. Low agreed.

~~Major Site Development Plan for Wentworth by the Sea Country Club, 60 Wentworth Road, Tax Map 24, Lot 6 1-26 in the Single Residence District to add for safety purposes a new maintenance driveway behind current 2nd tee, the existing maintenance path is widened for the use of delivery trucks that need to gain access to the golf course, create a water feature in front of the 10th and 13th green which will help with drainage issues as well as improve the golf course, an additional tee on the 16th hole as designed by the golf course architect, new tee on the 17th hole to give the members a new shorter perspective on the hold. File 01-10.~~

Peter Weeks, President of WBTSCC LTD was in attendance with Robert Diodati, General Manager; Jason Bastille, Golf Course Superintendent and Steve Oles, MSC Engineer.

Mr. Weeks went over the application with the TRC members stating that the new maintenance facility will be for safety reasons and it is currently a hazard for the maintenance equipment and he pointed to the existing tee, bottom of sheet and the cart path existing will be widened.

Chairman Cavallaro commented that it is just getting shifted.

Mr. Weeks agreed and stated it is existing and being widened.

Mr. Low asked how much.

Mr. Weeks replied that it is going from 10ft to 18ft. Mr. Weeks then turned to page/sheet 3 of 5 and stated that all the improvements are for the purpose of a better golf course.

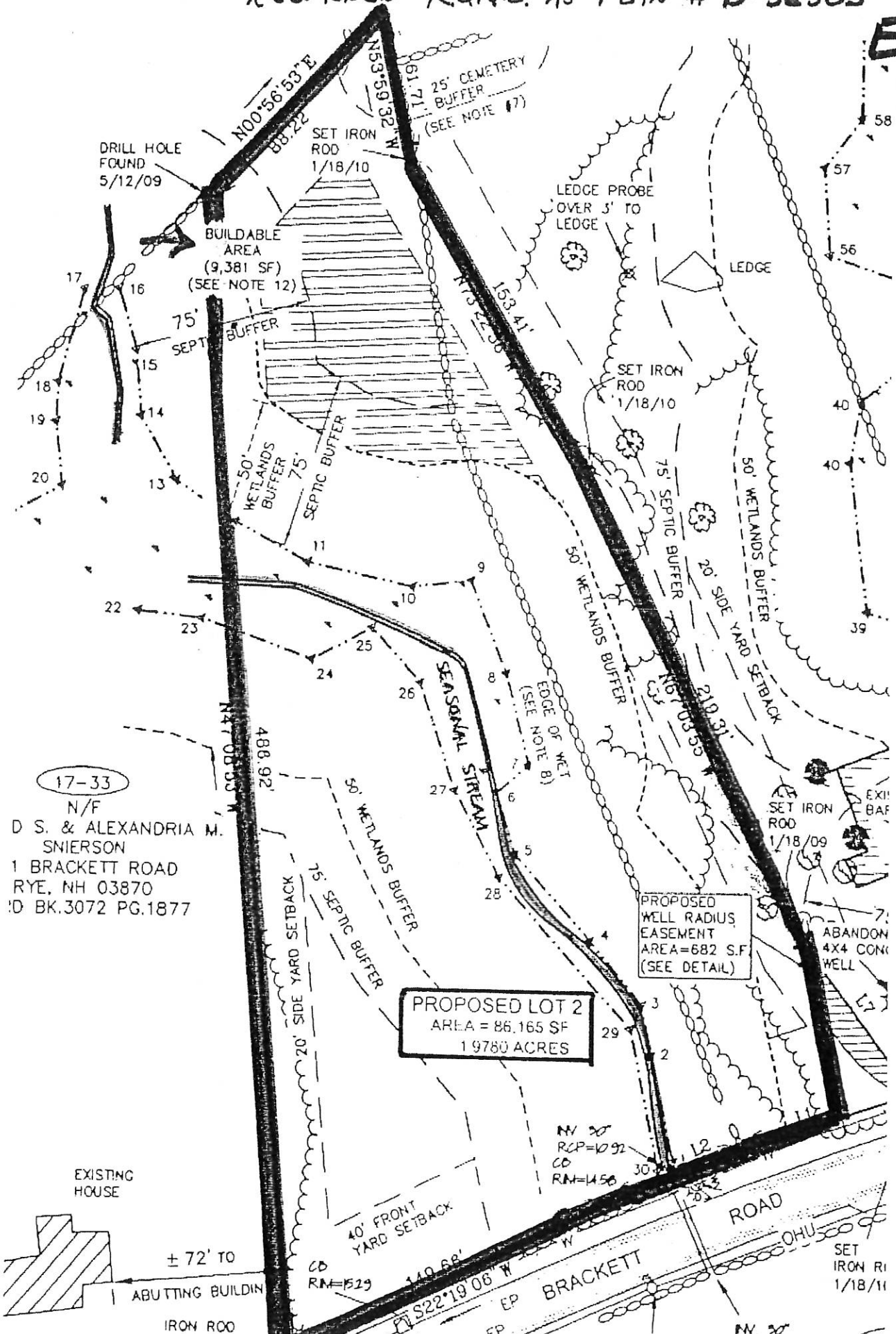
There was some discussion of the pond, stones and sides for the drainage.

Mr. Weeks talked about fixing the drainage on the 13th hole and pond (3 & 4 additions).

Mr. Weeks then talked about the man made tee on sheet 4 of 5 at the 16th hole.

FROM: 2010 SUBDIVISION PLAN FOR CELEST
 RECORDED RECORD AS PLAN # D-36305

EXH. F

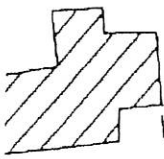


17-33
 N/F
 D S. & ALEXANDRIA M. SNIERSON
 1 BRACKETT ROAD
 RYE, NH 03870
 D BK.3072 PG.1877

PROPOSED LOT 2
 AREA = 86,165 SF
 1.9760 ACRES

PROPOSED WELL RADIUS EASEMENT
 AREA=682 S.F.
 (SEE DETAIL)

EXISTING HOUSE



± 72' TO
 ABUTTING BUILDING
 IRON ROD

NV 20
 RCP=10.92
 CD
 RM=14.50

SET IRON ROD
 1/18/11

NOTES:

1. THE PARCEL IS LOCATED IN THE SINGLE RESIDENCE DISTRICT AND IS SHOWN ON THE TOWN OF RYE ASSESSORS MAP 17 AS LOT 34.
2. THE PARCEL IS LOCATED IN ZONE X (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN), IN FLOOD ZONE X (AREAS OF 0.2% ANNUAL CHANCE FLOOD) AND FLOOD HAZARD ZONE AE (EL.9) AS SHOWN ON THE FLOOD HAZARD MAP FOR THE TOWN OF RYE, COMMUNITY PANEL NUMBER J3015C0288E, EFFECTIVE DATE: MAY 17, 2005.
3. OWNERS OF RECORD: GARY A. CEELY, GEORGE B CEELY & THE ESTATE OF GLEN F. CEELY
216 CANEY COURT
PRINCE FREDERICK, MD 20678
RCRD BK. #5052 PG. #1558
4. ZONE REQUIREMENTS:

MIN. LOT AREA	66,000 S.F.
MIN. FRONTAGE	200'
MIN. DEPTH	150'
SETBACKS:	
FRONT	40'
SIDE	20'
REAR	30' OR 1/4 OF THE DEPTH OF THE LOT, WHICHEVER IS THE LESS
MAX BUILDING COVERAGE:	15%
MAX BUILDING HEIGHT:	35'
5. TOTAL PARCEL AREA PRIOR TO SUBDIVISION: 473,916 S.F.
10.88 ACRES
6. IRON RODS AND/OR DRILL HOLES WERE SET AT ALL NEWLY CREATED LOT CORNERS ON 01/18/2010.
7. SEE RSA 289:3 FOR CEMETERY AND BURIAL GROUNDS RESTRICTIONS AND REQUIREMENTS.
8. WETLAND DELINEATION WAS DONE BY GOVE ENVIRONMENTAL SERVICES, INC IN MAY 2009 AND FIELD LOCATED BY MSC CIVIL ENGINEERS & LAND SURVEYORS, INC. THE WETLANDS WERE DELINEATED IN ACCORDANCE WITH THE 1987 ARMY CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL. THESE WETLANDS ALSO REPRESENT POORLY DRAINED SOILS.
9. SEE RSA 438-B, COMPREHENSIVE SHORELAND PROTECTION ACT FOR RESTRICTIONS WITHIN THE 250 SHORELAND PROTECTION BUFFER.
10. TOWN WATER IS AVAILABLE. THEREFORE NO ONSITE WELL IS NECESSARY FOR PROPOSED LOT 2.
11. CONTOURS & ELEVATIONS SHOWN HEREON ARE BASED ON THE NATIONAL GEODETIC VERTICAL DATUM (NGVD) OF 1929.
- 12. THE BUILDABLE AREA SHOWN HEREON IS FOR BUILDINGS ONLY. IT DOES NOT DEPICT AREAS SUITABLE FOR SEPTIC SYSTEMS. SEE SHEET 2 OF 2 ON FILE WITH THE TOWN FOR AREAS SUITABLE FOR SEPTIC SYSTEMS.
- 13. NHDES SUBDIVISION APPROVAL (#SA2009003240) WAS ISSUED ON NOVEMBER 25, 2009 LOT 2 APPROVED WITH MUNICIPAL WATER SUPPLY ONLY.
14. EROSION AND SEDIMENT CONTROL PLAN TO BE APPROVED BY THE BUILDING INSPECTOR PRIOR TO CONSTRUCTION OF THE HOUSE, DRIVEWAY AND SEPTIC.

EXH.
G

3.3 Present and Future Coastal Hazards

A. Past and Present Coastal Hazards

A wide range of coastal storms have effected Rye in the past including extreme rainfall events, Nor'Easters, hurricanes, and tropical storms. Figure 2 presents a summary of coastal storms that have produced widespread flooding and erosion along Rye's coastline from 1972 to the present. Parts of town have sustained significant damage from these storms events, particularly the shale piles at Sawyers Beach and low-lying segments of Route 1A.

Figure 2. History of significant coastal storm and flood events that have impacted Rye.

Event	Type	Rainfall/ Snow	Inland Flooding	Tidal Flooding	High Winds	Surge Height	Tide Stage
February 1972	Nor' Easter			✓	✓		
Blizzard of 1978	Nor' Easter	33" snow					
August 1991	Hurricane Bob						
October 1991 "Perfect Storm"	Nor' Easter			✓	✓	+3.5'	
October 1996	Tropical Storm	14" rain	✓	✓		500-yr	High
October 1999	Tropical Storm Floyd		✓	✓	✓		
Mother's Day May 2006	100-year+	14" rain	✓				
December 2011	Nor' Easter		✓	✓	✓		
Patriot's Day April 2007	Nor' Easter	6.5" rain	✓		✓		
Super Storm Sandy 2012	Tropical Storm	___" rain	✓	✓	✓		
February 2013	Severe storm/flooding		✓	✓	✓		
King Tide 2014	extreme tide	None		✓			High
King Tide 2015	extreme tide			✓			High
King Tide 2016	extreme tide	None		✓			High

The severity of flood events depends upon several factors and different types of storm events. A 100-year/1% chance precipitation event is based on the volume of rainfall (in inches) within a 24-hour period. A 100-year/1% chance coastal storm event is based on storm surge elevation which is influenced by tide stage, wind (direction, speed and duration), and seasonal astronomical cycles

Today, extreme precipitation and coastal storm events are the most immediate risk and threat resulting in flooding and property damage, while sea-level rise poses a more long-term risk of increased daily tidal flooding.

EXH.
H

APPENDIX B

KEY TO HIS SOIL TYPES

Source: Society of Soil Scientists of Northern New England, High Intensity Soils Maps for New Hampshire – Standards and Origins, January 1987, p. 8-9.

This key is used in determining soil types that are utilized in high intensity soil surveys for administration of lot size by soil type and wetlands regulations. The soil types are defined as soils having the same soil characteristics of drainage class, parent material, restrictive features, and slope; and are designated by a five part symbol, the parts being A, B, C, D, E.

SYMBOL A – drainage class

- 1 - excessively drained
- 2 - well drained
- 3 - moderately well drained
- 4 - somewhat poorly drained
- 5 - poorly drained
- 6 - very poorly drained
- 7 - not determinable (to be used only with Symbol B—6)

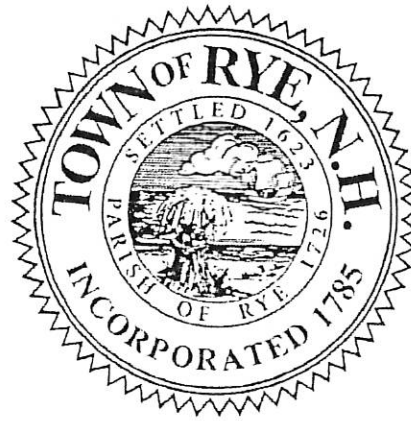
SYMBOL B - parent material

- Galciofluvial Deposits (outwash/terraces) - 1
- Glacial Till Material - 2
- Marine or Glaciolacustrine Deposits
 - Very fine sand and silt deposits - 3
 - Loamy/sandy over silt/clay deposits - 4
 - Silt and clay deposits - 5
- Excavated, regraded or filled - 6
- Alluvial Deposits - 7
- Organic Materials - Fresh Water - 8
- Organic Materials - Tidal Water - 9

SYMBOL C - restrictive feature (if more than one applies, list the most restrictive)

- 1 - none.
- 2 - bouldery, with more than 15% of the surface covered with boulders (larger than 12 inches in diameter).
- 3 - mineral restrictive layer(s) are present in the soil profile less than 40 inches below the soil surface — such as hard pan, platy structure, clayey texture. For examples of soil characteristics that qualify for restrictive layer, see Soil Manual for Site Evaluations in New Hampshire, pages 2—22, figure 2-8.

EXH.
I



Town of Rye

Land Development Regulations

Enacted September 20, 1988
Amendments Through 2005
Revised February 10, 2009
Revised, 2011
Amended October 14, 2014

WHAT HAS BEEN DONE

MONITORING (2004-Present)

- ⊗ Has included beach seep sampling, watershed investigations, and canine source tracking of bacteria

WATERSHED BASED PLAN (2011)

- ⊗ Identified stormwater and faulty septic systems as cause of bacterial contamination
- ⊗ Developed actionable recommendations that address contamination sources

319 PHASE I (2012-14)

- ⊗ Installed 4 water quality improvement projects that reduced bacteria, sediment, and nutrients from entering the river
- ⊗ Developed a septic system database that was prioritized by maintenance history, age, and environmental sensitivity
- ⊗ Conducted septic survey in key areas to update septic database
- ⊗ Promoted awareness of bacteria through outreach program

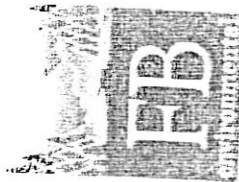
WHAT WILL BE DONE

319 PHASE II (2015-17)

- ⊗ Will install 2-4 water quality improvement projects on town property
- ⊗ Will develop town regulation of septic system maintenance
- ⊗ Will help to fund evaluation and replacement of failing septic systems through cost-share agreement
- ⊗ Will continue outreach program

FEASIBILITY STUDY

- ⊗ Town is considering a loan to support a comprehensive study of the watershed that will help guide future actions to reduce human-sourced bacteria



GET INVOLVED!

For more information, please contact:

Kim Reed, Planning & Zoning Administrator
10 Central Road
Rye, NH 03870
www.townrye.nh.us

Brochure design by L. Diemer, FBE
Photo credit: FBE



Funding for this project was provided in part by a Watershed Assistance Grant from the NH Department of Environmental Services with Clean Water Act Section 319 funds from the U.S. Environmental Protection Agency.

PARSONS CREEK

AND NEARBY PUBLIC BEACHES & ESTUARIES

CITIZEN GUIDE TO BACTERIA IN SURFACE WATERS

RYE, NEW HAMPSHIRE

F.B.E.

EXH.
2

RYE LAND USE ORDINANCES & REGULATIONS
AREA REQUIREMENTS

SECTION	REQUIRED	PROPOSED / ACTUAL	COMMENT
RBC Sec. 7.9.4.1 Distance Leach Field Must Be From Wetlands	Min. 100 Feet away from protected wetlands	c. 76 Feet	The leach field does not comply.
LDR Sec. 606.3.B S.F. of area outside the Wetlands District	Min. 44,000 S.F.	< 20,000 S.F.	Lot #2 does not comply.
RZO Sec. 202.13 Upland Soils	Min. 44,000 S.F. of which 30,000 S.F. shall be contiguous	< 44,000 S.F.	Lot #2 probably does not comply.
LDR Sec. 603.2.B Non-Wetland Soil	Min. 44,000 S.F.	< 44,000 S.F.	Lot #2 probably does not comply.
LDR Sec. 603.3.C Bottom of Leach Field Above SHWT	Min. 4 Feet above SHWT	2 Feet above SHWT	This is also required by RBC Sec. 7.9.3.2

EXH.
O

- B. Vernal pools shall be delineated based on the characteristics listed in the definition of vernal pools found in Appendix A.

301.3 Disputes about Wetlands Boundaries: Disputes about the locations of wetlands boundaries as determined by the Building Inspector or the Planning Board may be appealed to the Zoning Board of Adjustment as an administrative appeal pursuant to Section 701.1 of this ordinance. The zoning board of adjustment may call upon the services of an independent NH Certified Wetlands Scientist to examine said area and report his or her findings to the Board for their determination of the boundary. NH Certified Wetlands Scientist is interpreted to mean a person qualified in wetlands delineation and who is licensed by the State of New Hampshire. (Rev. 1992, 1995 & renumbered 1995, Rev.2012)

→ **301.4 Purpose:** In the interest of public health, convenience, safety and welfare, the regulations of this District are intended to guide the use of areas of land with extended periods of high water tables. (Renumbered 1995 and 2012, Amended and renumbered 3/18/2017)

- A. To control the development of structures and land uses on naturally occurring wetlands, that would contribute to pollution of surface and ground water by sewage and stormwater runoff.
- B. To reduce the impact on wetlands of uses, development and re- development by controlling the rate and volume of stormwater runoff and preserving the ability of wetlands to filter pollution, trap sediment, retain and absorb chemicals and nutrients, and produce oxygen by utilizing Best Management Practices – Wetlands Conservation District (Appendix A) and Low Impact Development techniques (Appendix A).
- C. To prevent the destruction of natural wetlands and their buffers which provide flood protection, recharge the ground water supply, and the augmentation of stream flow during dry periods.
- D. To minimize the spread of invasive plant species.
- E. To prevent unnecessary or excessive expenses to the Town to provide and maintain essential services and utilities which arise because of unwise use of wetlands.
- F. To encourage those uses that can be appropriately and safely located in wetland areas.
- G. To preserve wetlands for other ecological reasons such as those cited in RSA 482-A.
- H. To preserve and enhance those aesthetic values associated with the wetlands of this Town.
- I. To restrict construction in wetlands to the maximum extent practicable.
- J. To preserve, protect, and enhance, potential water supplies and aquifers and aquifer recharge areas.

301.5 Permitted Uses in Tidal Marshes and Fresh Water Marshes: Within the areas defined by S 301.1-A any use is permitted that does not result in the erection of any structure or sign larger than four (4) square feet, or alter the surface configuration by the addition of fill or dredging, and

**ARTICLE I
INTRODUCTION**

SECTION 100 TITLE:

This ordinance may be known and may be cited as "Zoning Ordinance of the Town of Rye, New Hampshire."

SECTION 101 AUTHORITY:

This ordinance is enacted pursuant to the Planning and Zoning Enabling Legislation of the State of New Hampshire, which is embodied in New Hampshire Revised Statutes Annotated, Title LXIV, and Chapters 672-677.

→ **SECTION 102 PURPOSE:**

This ordinance is enacted for the purpose of promoting the health, safety and general welfare of the community. The regulations herein give consideration to the character and suitability for particular uses of area in the Town of Rye, the conservation of the value of buildings and the encouragement of the most appropriate use of land throughout the Town of Rye. The ordinance is designed to:

- Lessen congestion in the streets;
- Secure safety from fire, panic and other dangers;
- Promote health and the general welfare:
- Promote adequate light and air;
- Prevent the overcrowding of land;
- Avoid undue concentration of population;
- Facilitate adequate provision of transportation, solid waste, water, sewerage, school and Recreation facilities; and,
- Assure proper use of natural resources and other public requirements.

SECTION 103 SCOPE:

No land in the Town of Rye shall hereafter be used for building, development or otherwise and no structure shall be erected, enlarged, materially altered or moved, except in conformance with this ordinance.

SECTION 104 LIMITED APPLICABILITY WITHIN RYE BEACH PRECINCT:

As authorized by special state statute, the Rye Beach Precinct has separate and primary zoning powers within its boundaries. Within the Rye Beach Precinct one must comply primarily with the Precinct's zoning ordinance and, where it is silent, one must also comply with the Zoning Ordinance of the Town of Rye, New Hampshire.

SECTION 105 ORIGINS:

This ordinance represents a simplification, reorganization, statutory update and clarification of the zoning regulations in effect in the Town of Rye as of the date of its enactment. It replaces the zoning ordinance adopted on March 11, 1969, which had been amended several times. The Town of Rye's first zoning ordinance was enacted in 1953.

RYE BUILDING CODE

PREAMBLE - AUTHORITY

Pursuant to the authority vested in towns by Chapter 674:51, as amended, and all other enabling statutes and laws, and to provide for safety, health, and public welfare in the Town of Rye, the following Ordinance is hereby enacted by the voters of the Town of Rye, New Hampshire, in official town meeting convened on March 14, 2000.

This Building Code replaces in its entirety the Building Code enacted on March 11, 1969 and the several amendments thereto.

SECTION 1 - TITLE, PURPOSE, SCOPE

1.1 **Title and Construction:** This Ordinance, and the building regulations it contains shall be known and may be cited as "The Building Code of Rye, New Hampshire" and for short form may be referred to as the "Code" and shall be construed to secure the beneficial interest thereof, which are public safety, health and welfare insofar as they are dependent upon the design, construction, maintenance, repair, alterations, removal or demolition of buildings and structures and their attendant sites.

→ 1.2 **Purpose of the Building Code:** The purposes of this Code are: to provide for safety, health and public welfare through structural strength and to protect life and property from fire hazards incident to the design, construction, maintenance, repair, alteration, removal or demolition of buildings and structures; and to assure that all construction of buildings and structures and development attendant to such work are performed in a manner compatible with both the Rye Zoning Ordinance and all other applicable regulations and approved plans.

1.3 **Scope:** This Code provides for matters concerning, affecting, or relating to the design, construction, maintenance, repair, alteration, removal, demolition, equipment, use and occupancy, location and condition of buildings or structures erected, or to be erected within the Town of Rye, New Hampshire, excepting insofar as such matters are otherwise provided for in the Town and in the Rye Beach District Zoning Ordinances, The Rye Planning Board Land Development Regulations, and in other statutes or ordinances, or in rules promulgated under the provisions of this Code. Wherever the word "town" is used in this Code, it shall be held to mean the Town of Rye, New Hampshire.

1.3.1 **Buildings and Structures Affected:** The provisions of this Code shall apply to buildings or structures, as defined by the Rye Zoning Ordinance, on land or over water, however placed, whether separate from or appurtenant to such buildings or structures and to their attendant sites. Such provisions shall apply with equal force to municipal, county or state buildings as they do to private buildings, except as may be specifically provided by statute or ordinance. The provisions of this Code, based on occupancy, also apply to conversions of existing buildings and structures or portions thereof from one occupancy classification to another.

TITLE L

WATER MANAGEMENT AND PROTECTION

CHAPTER 482-A

FILL AND DREDGE IN WETLANDS

Section 482-A:1

482-A:1 Finding of Public Purpose. – It is found to be for the public good and welfare of this state to protect and preserve its submerged lands under tidal and fresh waters and its wetlands, (both salt water and fresh-water), as herein defined, from despoliation and unregulated alteration, because such despoliation or unregulated alteration will adversely affect the value of such areas as sources of nutrients for finfish, crustacea, shellfish and wildlife of significant value, will damage or destroy habitats and reproduction areas for plants, fish and wildlife of importance, will eliminate, depreciate or obstruct the commerce, recreation and aesthetic enjoyment of the public, will be detrimental to adequate groundwater levels, will adversely affect stream channels and their ability to handle the runoff of waters, will disturb and reduce the natural ability of wetlands to absorb flood waters and silt, thus increasing general flood damage and the silting of open water channels, and will otherwise adversely affect the interests of the general public.

Source. 1989, 339:1, eff. Jan. 1, 1990.