

**RYE ZONING BOARD of ADJUSTMENT
Meeting**

**Wednesday, January 2, 2019, 7:00 p.m.
Rye Town Hall**

Members Present: Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Tim Durkin, Charles Hoyt and Gregg Mikolaities.

Others Present: Zoning & Planning 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

- **December 5, 2018**

**Motion by Shawn Crapo to approve the minutes of December 5, 2018 as amended.
Seconded by Gregg Mikolaities. Vote: 4-0-1 Abstained: Patricia Weathersby**

Motion by Shawn Crapo to continue the applications of Ray's Seafood Restaurant, Carl Boedecker and Erika Pagel, Lisa Lombard, Rannie Webster Foundation, and Brian and Diane Ferguson to the February meeting. Seconded by Tim Durkin. All in favor.

III. Applications:

- 1. Donald K. Laing Revocable Trust, T. Beaton & Scott Laing, Trustees of 21 Whippoorwill Drive, Newton, NH for property owned and located at 140 Harbor Road, Tax Map 9.2, Lot 17, request variances from Section 603.1 and 603.2 for expansion of a non-conforming structure on a non-conforming lot; from Section 203.3F for lot area where 50,516sf exists, 50.516sf is proposed and 66,000sf is required and lot frontage where 0' exists, 0' is proposed and 150' is required; from Section 301.8B (1) (2) & (7) for construction in the wetlands buffer, where 14.8' exists from tidal water to cottage, 22.9' is proposed and 100' is the required tidal buffer, where 19.6' exists from freshwater to cottage, 22.4' is proposed and 75' is the required freshwater buffer, where a privy is located in the tidal wetland resource, a septic tank is proposed 50' from tidal water where 100' is required, a leachfield is proposed 60.6' from tidal water where 100' is required and leachfield is proposed 44.6' from freshwater where 75' is required; from section 301.5A for disturbance in the 50' buffer; and relief from building code Sections 7.9.2.2, 7.9.4.1 and 7.9.4.2 for septic tank 50' tidal, leachfield 60.6' tidal and 44.6' freshwater where 75' is required. **Property is in the Single Residence District, Coastal Overlay and SFHA, Zone AE. Case #44-2018.****

Attorney Tim Phoenix, representing the applicant, spoke to the Board. He presented the plan that was submitted in the Board's packets. He explained the lot is 50,516sf with a cottage just under 550sf. The existing privy is the only restroom facility, which is proposed to be removed. The cottage is seasonal and will remain seasonal. The septic being proposed is an advanced on-site solutions system. He continued there is a relatively modest addition being proposed. (He pointed out on the plan the existing cottage, which is parallel to the lot line. The cottage will be turned and pulled back from the wetland with a modest addition being added to the cottage.)

Eric Weinrieb, Altus Engineering, stated that the first thing they did was gather the existing conditions for the site. Wetlands mapping was completed for the site. There are three different types of wetlands on the site; tidal, poorly drained and an isolated wetland. He continued the lot does not have actual street frontage. It is a rectangular lot that has access to Harbor Road through an easement. There is a shared driveway with the abutter across a parcel on Harbor Road. Recently, Rye Water installed new water in this area and provided a curb stop. He pointed out that the only developed area around the property is the parcel to the left. (He noted the significant size of the abutting home compared to the cottage on the applicant's parcel. He pointed out the areas on the map for the freshwater, tidal and isolated wetlands. He also pointed out the area for the shared driveway and access for the parcel.) He explained that the proposal is to turn the existing cottage and move it back slightly with a modest addition being built. The existing privy is in the tidal wetland. He noted that in the summer of 2017, the process was started with the wetlands mapping, survey and test pit application. The applicant was told at that time the test pits could not be done without zoning relief because it was in the wetlands buffer. Through the process of working with the building department and DES, they said the test pits could go forward because that area was previously disturbed. The septic design was completed with the test pits. DES would not let the septic application be filed until the zoning relief is approved. DES has said that the design is approvable and it will be getting rid of a bad situation. DES has also noted that the cottage will never be year round because the lot does not meet loading for year round use; however, it does meet the criteria for seasonal. He continued that in February of 2018, the wetlands permit application was filed and the permit was received in June. The permit was for a minor wetlands impact that involved work within 50ft of the saltmarsh. (He read from DES conditions of approval dated June 12th.)

Vice-Chair Crapo asked if the conditions on the cover letter are different conditions than what is on the permit.

Mr. Weinrieb explained that the conditions that are in the board's packets are standard conditions (with specifics for the lot) and the letter explains why they were approved. He noted that the finished floor of the building is at 10.33 now and it will be raised to 12.5. It is going to be an AOS septic system. The grade will be raised 4ft above the seasonal high and above the 100 year flood for the septic.

Chair Weathersby asked if the grade is going to be raised for the house.

Mr. Weinrieb explained the house is not going to have a full foundation. It will be on columns.

Chair Weathersby asked if the grade will be changed under the house.

Mr. Weinrieb noted that Sheet C-2 shows the grading.

Referring to the septic loading, Vice-Chair Crapo commented that his concern is that if it is a lesser standard number (for seasonal), it would not be enough safety capacity for intense use.

Mr. Weinrieb explained that the design is for two bedrooms, which is the minimum requirement in the State (300 gallons per day). He noted that 70 gallons per person, per day, is the average for water use.

Referring to the map, Member Durkin asked how the tidal lines were determined.

Mr. Weinrieb noted the lines were determined by **Mike Cuomo, Soil Scientist**. He noted that there is a rack line. There is also a change in vegetation from tidal to freshwater wetland.

Member Durkin asked if the property has ever flooded.

Donald Laing, applicant, noted that during the storm of 1978 there were some issues. The water came up to just about the threshold of the structure.

Chair Weathersby noted that she was at the site the weekend before Christmas when it was probably close to high tide. The house area was not under water. The privy was in the water. The area in the front where the rose bushes are was dry. Everything else was under water. She asked if wetlands buffer relief is needed from DES.

Mr. Weinrieb explained that the State permit is based on 100ft to the tidal wetland only. The only time they get involved with freshwater is when it is being impacted.

Jennifer Ramsay, architect, noted that the proposed plan elevations are in the Board's packets. She presented the existing home on the plan before the Board. She noted that she was asked to design a small and simple structure that would be functional and usable. All of the features for expansion, where done predominantly to meet code and were designed with the most minimal constraints, while still being functional. She noted that there will be a three-quarter bath on the first and second floor. The kitchen is very compact and is laid out very simply to still be functional. The design stays with the cottage style so there is not a full second floor. The second floor has dormers. Any place that someone can stand up in is in a dormered space. The ceilings are low on the second floor and meet the required code height of 7'6". She noted that rotating the cottage provides the homeowner with more privacy, as well as the abutters. The windows have been enlarged for egress. The north side of the cottage has larger windows because it faces the harbor. Everywhere else the windows are modest and are just for natural light and ventilation. She pointed out that this is a modest addition and reuse of the space.

Member Mikolaities stated that he understands that the existing grade is 7.5 and 28ft is being added.

Ms. Ramsay explained the 28ft is taken from the grade preconstruction. The structure is not exceeding the allowable building height. She noted that the height is including the cupola. She also noted that the first floor is at 12.5.

Regarding the relief requirement, Attorney Phoenix noted that they need 603.1 for expansion. The denial letter also said 603.2 but he does not think that is needed. Similarly, 603.3, lot area and frontage, the building department added that in as a variance. However, this is a prior long existing non-conforming lot. In his experience, this Board only required a variance for lot area and frontage if the lot didn't already have a structure on it. He asked the Board to consider whether those are required variances. He continued that the reason variances are required is because it is within the buffer. If it wasn't for the buffer, variances would not be needed. It is important to note that height and coverage variance are not needed. Also, yard setback variances, in any direction, are not needed. It is only because of the wetland buffer issue that variances are needed. This Board is charged with balancing the requirements of the ordinance and DES requirements to the rights of the property owner. (He showed the location of the property on the tax map.) He noted that the other lots in this area got some kind of relief from the Board, some included wetland relief. The nearest neighbor obtained at least a variance for septic system within the buffer.

Member Hoyt asked how long the lot has been a lot of record.

Attorney Phoenix noted that this family has owned it for 50 plus years.

Mr. Weinrieb stated that the tax card shows that the cottage was built around 1900.

Attorney Phoenix noted that there is a petition signed by 15 property owners in this area, most which are immediate abutters, who support this project. He continued that in comparison with the homes throughout this area, this is a very modest proposal. All the properties on Harbor Road got variances to utilize their properties, including septic variances. The DES has absolutely no problem with this proposal, in comparison to what is there today. He noted that there is no place to put this modest house without being in the buffer.

Member Mikolaities stated there is an October 3rd letter from the Conservation Commission. He noted that the letter states the plan is far too expansive. He asked if there is a response to the letter.

Attorney Phoenix stated they respectfully disagree with the Conservation Commission and so does DES. DES heartily and wholly endorsed this proposal, as compared to what is there today.

Chair Weathersby pointed out the DES approval is for the tidal buffer only.

Referring to the map, Mr. Weinrieb pointed out that the area that is the freshwater buffer. He noted that the town freshwater and tidal buffers overlap. The septic is 60.6 from the tidal waters and 24.6 from the freshwater. It has been moved as far away as practically possible to the most

reasonable location. DES recognized the need to expand the building. He has been on the site multiple times with the Conservation Commission where they have said they would support it if nothing was added on. They did not want the building to be any bigger. The need to make the building larger is very important to make it more functional.

Vice-Chair Crapo asked how the difference between the freshwater and saltwater tidal is measured.

Mr. Weinrieb noted the area does not become inundated. The vegetation is a freshwater vegetation.

Attorney Phoenix stated that while they respect the Conservation Commission's comments, he does not think they are founded in the realities of what is going on in this general area with all the variances that have been obtained by properties in the area. To take the small building and put in a kitchen, bathroom and stairway, it is only reasonable to put a small addition on it. He is asking that the Board agree that given the situation of being in the wetland buffer, and balancing that against property rights and the modesty of the proposal, it is reasonable. DES has agreed. He pointed out that the Conservation Commission is advisory only. They gave DES their opinion and DES approved it.

Chair Weathersby asked why they did not take the roof off and do a second story without the addition. She commented that there is so little dry land on this "little island". She is concerned they are adding more square footage on the ground.

Ms. Ramsay stated if they went up with full walls and put everything in for code compliance, the space would still not be very functional. The footprint is a very challenging footprint. The new home in its entirety is the size of a standard cape. The current first floor square footage is 415sf. On the second floor, the standing space in the middle is 129sf. In total, the new first floor will be 799sf and the second floor is 578sf, so right around 1300sf.

Member Mikolaities asked how the seasonal aspect is policed.

Mr. Weinrieb explained that Rye Water turns the water off.

Speaking to the building inspector, Chair Weathersby asked how the timeframe for seasonal is determined.

Chuck Marsden, Building Inspector, stated it is May 15th to October 15th.

Mr. Weinrieb explained they could not find anything in the local code that defined this so they were following what DES says.

Chair Weathersby asked if they are saying it is seasonal as defined by Rye.

Mr. Weinrieb stated they are proposing seasonal as defined by the septic system criteria, which is nine months.

Attorney Phoenix read from the ordinance the definition of seasonal dwelling unit.

Chair Weathersby asked where the proposal stands with FEMA compliance.

Mr. Weinrieb stated the first floor is being moved up to 12.5. The septic will be above the 100-year flood. It will be in compliance with FEMA regulations.

Attorney Phoenix reviewed the criteria for granting the variances.

- The variances are not contrary to the public interest and the spirit of the ordinance is observed.

The ZBA must determine whether granting the variances would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objective, mere conflict is not enough.

The purpose of the zoning ordinance is to protect the health, safety and welfare of the community. DES has said that this improves the health, safety and welfare. It is a single seasonal family home now and will remain such. Secure safety from fire, panic and other dangers. The dwelling will be totally code compliant with a brand new septic system, instead of a privy. Safety is enhanced. Promote health and general welfare. The dwelling will be way under lot coverage and dimensional relief is not needed. Promote adequate light and air. There is plenty of air and light. The coverage is less than 3% of the lot. It is much smaller than most, if not all, of the nearby neighbors. Prevent the overcrowding of land. This is a single family seasonal dwelling and will remain as one. Avoid undue concentration of population. No change and it will not even effect the school system. Facilitate adequate provision of transportation, solid waste, water, sewer, school and recreation facilities. Those will not change except for making solid waste better and water will be town water. Ensure proper usage of natural resources and other public requirements. DES was happy that the building was moving back and endorsed the project, including the addition and the new advanced septic system.

- Does it alter the essential character of the locality? This is more modest than many of the homes in the area. Many have had the same or similar variances. Many of the buildings nearby are the same proximity to the marsh as this building. This will not be changing the essential character of locality nor is it threatening the public health, safety or welfare.
- Granting the variance will not diminish surrounding property values.
- The denial of the variance would result in an unnecessary hardship. This lot has had a home and privy on it for decades. It is a long prior existing condition and has been occupied seasonally. There is nothing that can be done on the property without relief. Because the wetland buffer encompasses most of the lot, special conditions exist.

No fair and substantial relationship exists between the public purposes of the ordinance and its application in this instance. Section 603, expansion, is designed

to prevent overcrowding and over bulking. Compared to the other structures and homes in this area, this is very modest and is not overcrowding or over bulking. The reasons for the wetlands buffer is to protect the wetland. That has to be balanced against property owner's rights to develop and reasonably use their property. A stormwater management plan has been done to prevent anything from getting to the wetland.

The proposed use is reasonable. A single family seasonal home exists and will remain, with appropriate stormwater management and septic to protect the general wetland.

- Substantial justice will be done by granting the variances. If there is no benefit to the public that would outweigh the hardship to the applicant, this factor is satisfied. Any loss to the applicant, not outweighed by any gain to the general public is an injustice. If the variances are denied, the small structure will remain where it is, closer to the wetland, with the privy. The owners have the right to use it as such. They are willing to undertake the expense to beautify the structure, move it further from the wetland and put in an advanced septic system. There is no harm to the public. If this is denied, the owners do not have reasonable use of their property. He would consider that potentially to be a taking.

He noted that Peter Stanhope will address the criteria for surrounding property values.

Peter Stanhope, Appraiser, stated that he was asked to do a specific study looking at the proposal and how it would relate to other properties in the vicinity. He noted that this is a far more modest use from other properties in the area and it is a seasonal residential use. In his research and study, he found nothing that would diminish the values of surrounding properties. (A complete report from Mr. Stanhope was submitted to the Board.)

Chair Weathersby noted letters of support were received from:

- Nancy Braese & Michael Traverse
- David Aponovich
- Wendy Cabral
- Bruce & Nance Valley

Chair Weathersby opened to the public.

Chuck Marsden, Building Inspector, stated that he does not disagree with Attorney Phoenix's definition of a seasonal dwelling. The determination of whether a dwelling is seasonal is based on Rye Water turning the water on and off.

Vice-Chair Crapo noted that there are other homes in that are that have their water year round; whereas, there are other areas where there is a whole street that gets turned off. He asked if the cottage would be capable of being year round. The relief requested isn't necessarily seasonal relief; however, a lot of it is based on a permit for a septic that is deemed seasonal. Could this be made a year round residence a year from now?

Mr. Weinrieb explained that he met with Rye Water and they want the new service to be constructed at full depth because of freezing. It doesn't change that they are going to be shutting off that water on a seasonal basis; however, it will be constructed to modern standards.

Tony Miller, 175 Harbor Road, noted that he has seasonal units in town and the water department has to be called to have the water turned off and on.

Vice-Chair Crapo commented that if a call is not made to the water department there will be water year round and it will no longer be seasonal.

Chair Weathersby clarified that the water service could be a year round service. DES has said that this property has to be nine months or less. This Board can say nine months or it could say six months.

Referring to number 3 of the denial letter, Section 603.2, Mr. Marsden stated that to follow through with this proposed work, a demolition permit will be required because of the definition of "demolition". The structure is being raised and will require a demolition permit. (He read from the definition.) He noted that if a building is being torn off its foundation and being relocated, it is demolishing its present location and locating it on a new foundation. He cautioned that the existing structure, depending on how it is built, may have to be demolished anyway.

Referring to the definition of "demolish", Attorney Phoenix stated he does not think this is a fair way to read it. He noted that they asked for the variance anyways.

Mr. Laing stated that they have not decided which way they are going to go. It depends on the condition of the building.

Ms. Ramsay stated there are benefits to building new and there are also nostalgic benefits to keeping and repurposing the structure. That will remain unknown until the owner decides what makes the most sense.

Attorney Phoenix stated that if this is the case, then the building inspector is right.

Chair Weathersby commented that in case the owner changes his mind, they should look at 603.2 also.

Attorney Mark Puffer, representing Tony and Donna Miller, stated that his clients are the direct abutters to the west of the subject property. The Millers bought their home in July of 2018. Had they known what was going to be proposed, they would not have bought their property because of the diminishing effect on property values and the neighborhood. He stated that with respect to the seasonal use, he is concerned as to how that would be enforced. A subsequent owner may have an issue with the nine month limitation and it will be difficult to police the situation. His clients' property is the only one that is going to be significantly affected by this project. The proposed building will be hidden by his clients' home for all the other homes to the west or they are quite some distance away.

Vice-Chair Crapo asked what he sees as the potential harm to his clients' if the property is used for twelve months versus the nine months.

Attorney Puffer explained that right now there is a common drive that these two properties share. Driving in, on the left, is a fishing shack that was built in the 1800's. There is now going to be a house there. The footprint of the new building is going to be double. The total square footage of the building is going to be triple from what is there now. It will be a much bigger building. There is also going to be a septic system, which is elevated 4ft and will be up against the 20ft setback to his clients' property. It will block the view to the ocean if the applicant is allowed to build a building that is 12ft higher than what is there now. The building will be shifted so the front of the building will no longer be towards Harbor Road. It will be oriented more towards his clients' property.

Member Hoyt asked the square footage of the Millers' home.

Tony Miller noted that it is roughly 4900sf.

Vice-Chair Crapo commented this does not answer his question. He asked how the nine months versus the twelve months is going to affect the Millers.

Attorney Puffer replied it is the policing factor. If it is nine months, it'll be better; however, a house is still going to be there the entire time.

Member Hoyt stated that he knows that "fishing shack". It is a modest structure. He thinks what is being proposed is still in the realm of modest. He is not convinced that this will adversely affect the 5,000sf house that this is going up against.

Attorney Puffer stated that if the building was built as proposed, it would be modest in comparison to some of the existing buildings that are there but that is not the test. The test is how it compares to what is now grandfathered and allowed on the property. They are trying to use what is grandfathered, the existing fishing shack, for leverage to get something that is much bigger, much higher and much closer. It has to be compared to what is there now. It's a non-conforming use. Homes are not allowed in the wetlands buffer at all. It has to be compared to what is there now and how much the non-conforming use is going to be expanded.

Vice-Chair Crapo asked what case law sets this standard.

Attorney Puffer stated that the zoning ordinance says that a non-conforming use can be expanded under certain conditions. He commented that he does not have case law. He reiterated that they want to expand a non-conforming use so how much that is being expanded has to be looked at. All that is grandfathered is the 544sf fishing shack. He stated that what defines the public interest and the spirit of the ordinance is the town's zoning ordinance. That is what the voters have passed and want for zoning in the Town of Rye. (He reviewed the town's ordinances in reference to the proposal.)

Vice-Chair Crapo asked how the criteria for the variances, as analyzed and applied, would negate the Board granting the relief.

Attorney Puffer stated that what is being proposed is much more than a modest change from what is there right now. The general policy of zoning lies to carefully limit the extension and enlargement of non-conforming uses. Thus, courts strictly construe provisions that permit the continuance of such uses. He asked that the Board keep this general principal in mind as they consider if they want to vary the provisions for all the relief they are asking for. They are asking for a use that is much greater. It is not an allowed use. The Board should be construing any expansion of a non-conforming use. He continued that it is not only a 50,000sf lot, which is only about 75% of what is needed for acreage, but the area that is not in the tidal wetlands is much smaller than that. The area that is not in the tidal wetlands is only about 20,000sf. In the wetlands buffer area, buildings and structures are not allowed. They do have a grandfathered use; however, they should be allowed to leverage it into something much bigger that is also not allowed in the zoning ordinance. He noted that the ordinance explicitly says that no septs are allowed in the wetlands buffer. The ordinance explicitly says that no buildings or structures are allowed. What the ordinance says, defines what the public interest is. The ordinance defines what the spirit of the ordinance is. That is what the voters have passed. Given the instructions in the ordinance, which explicitly says no buildings in the wetland area, it is not in the public's interest, as defined by the voters of the town. It is also not in the spirit of the ordinance, as defined by the voters in the town, to grant these variances.

Attorney Puffer noted that the structure is seasonal now. He is sure it is not used more than July and August, as there is no heat or bathroom. The proposal is an extensive expansion, both in terms of its usage and in terms of the structure. As to whether granting of the variances result in substantial justice. Basically, the harm to the public is balanced, if the variance is granted, versus the harm to the owner if the variance is not granted. The square footage of this home is basically doubling and tripling. It was said that denial of the variance would greatly harm the applicant and prevent any expansion on the property. Expansion on this property is not allowed, and the ordinance specifically says it is not allowed, and the owners have no guarantee of anything. The application is that it does not alter the essential character of the area and it does not threaten the health, safety and welfare of the community. He stated it does threaten the welfare of the community, as defined by the town's ordinance. What is the purpose of the ordinance if someone can double or triple the size of something that was built in the 1900's? Would granting the variance diminish surrounding property values? The applicant has said that "the proposed addition does not intensify the use of the property". He stated this is a doubling or tripling of the use of the property. Standing at the Millers' property and trying to look at the ocean and marsh, this is substantially going to block their view. He asked the Board to consider the Rye Conservation Commission's recommendations. They, like NH DES, are more than happy to get rid of the privy; however, he does not think anyone has been using it in any substantial way for many years. The Rye Conservation Commission is only advisory to this Board but they went out there three times to look at the property. They feel that this big of an expansion would not be appropriate and would overburden this property. (He reviewed photos taken of the property.)

Mr. Miller stated that the main issue they have is the rotation of the house, along with the increase in the height. Rotating the house would impact their high-volume area; living room, dining room and kitchen. He does not feel that rotating the house would make it more private. It would open up the profile so the houses would be staring at each other. The new house would creep much closer to his house, even though it meets setbacks. Looking out his front door, he will see the Laing house. He continued that his other issue is the scale of the structure. It will have a significant impact due to the proximity to his house. Doubling the size of the footprint will have a detrimental effect to his property.

Attorney Puffer stated that one of the things that the applicant needs in order to show is unnecessary hardship, is that there is no fair and substantial relationship between the zoning provisions and their specific application in this instance. The specific zoning provisions they are asking to be waived have to be looked at. The principal one is the use in the wetlands buffer area. Buildings are expressly excluded from the wetlands buffer area. He acknowledges that they are allowed to keep the "fishing shack" and would probably be able to tear it down and rebuild. His clients have no objection to them rebuilding in the existing footprint and at the existing height. Is there a fair and substantial relationship between the wetland buffer area provisions and their specific application in this case? There is a profound relationship between them because it says there are not supposed to be any buildings in the wetlands buffer. There are not supposed to be any structures there whatsoever. The wetlands provision to this property carries out a public purpose. The applicant has the burden to show there is no burden between the wetlands buffer provision and what they are proposing to do. Enforcing the ordinance here does promote the environmental goals, which are accommodated by having wetland buffer areas. The applicant also has to show that the use is a reasonable one. He does not think they have shown that. The zoning ordinance does not allow dwellings in the wetlands buffer area. It is not a reasonable use there. The purpose of limiting expansion of non-conforming uses is because they will go away and all uses will be in compliance. If these requested variances are granted, it is never going away. He noted that they are trying to leverage a 544sf fishing shack, seasonal use, without a bathroom and septic, into a 1700sf, almost year-round home. (He spoke in regards to variances granted on other homes in the area.) He noted that variances were granted for those properties but they were basically approving existing grandfathered conditions. He does not think they can point to any variances that were granted in this area where there were substantial expansions of what was grandfathered. He noted that his clients realize the applicant has a grandfathered right and they should be allowed to build in that footprint. However, the substantial expansion they are proposing should not be allowed. It does not meet the variance criteria in any way whatsoever.

At 9:50 p.m., Chair Weathersby recessed the meeting.
The Board reconvened at 9:58 p.m.

Chair Weathersby noted that the Board has received a letter from the Conservation Commission based on three site visits.

Attorney Phoenix stated this boils down to the Millers just don't want to look at this new building. Attorney Puffer's mentioning of other properties in the area obtaining similar relief drives home the point of Walker v. Manchester, which says if there is a situation that is similar to

other situations in the area that constitutes a hardship. The applicant is doing nothing more than becoming consistent with what has happened there. All the relief really relates to wetland setback, except the expansion, which wouldn't be needed if it wasn't for the buffer. He continued that certain things are prohibited under the ordinance but that is why the Board is here. The Board gives variances when they are justified. He noted that this is a modest proposal with a small addition. DES has approved it and says that it is better. It should be permitted. The ordinance states that existing septic systems in buffers may be replaced per NH DES only if no public or private sewer is available. There is an argument that relief is not needed for the septic system because they are replacing the existing system with a better one.

Attorney Phoenix stated that this gets down to the view. There is no view easement here and they are not entitled to a view. What they are entitled to is an argument that says their property value will be diminished if the variances are granted. The wetland setback relief does not affect them at all. The only thing that affects their view is this expansion, which would not need a variance if it was not in the wetland buffer. He continued that Attorney Puffer asked who would police the seasonal use. He would hope that the Board would give the Laings the benefit of the doubt that they are going to follow the requirements. He stated that a point was made that the house would be coming closer to the Millers' house, which is true. This is to get it further away from the wetland. It meets the setback requirements and is not as close to the property line as the Millers' house. The Miller lot appears to have as much of a wetland buffer on it as the Laings'. He noted this is a balancing of property rights. The Laings have the right to develop and use this property reasonably. It has been shown that the proposal is modest compared to everything else around. The DES agrees. There is just no reason for the Board not to grant these variances. He reiterated the Millers are not entitled to a view. There is evidence that their property value will not be diminished. There is evidence that the septic will improve things. A hardship has been demonstrated. There is no reason not to grant the relief.

Member Mikolaities asked why the cottage was not kept in place with an addition built off the back. He asked why the house was moved.

Mr. Weinrieb explained the house has to be raised. When speaking with DES, they stated they wanted it moved further away from the resource. The home has to be raised because of the flood elevation plus it is on concrete block. The Laings also wanted to create more of a private back yard and this was the optimum area for the septic system.

Chair Weathersby asked about contiguous uplands.

Mr. Weinrieb replied it is about 15,000.

Chair Weathersby asked for the square footage of the home.

Ms. Ramsay stated that the existing is 544sf. The proposed is 1761sf. The occupiable space is 1531sf. In taking out the stairs and bathroom, which they don't currently have, there is 1377sf of useable space.

Member Hoyt asked how the property is used now.

Mr. Laing explained that it is used as a summer cottage and has been for 47 years. He noted that he uses it from spring to late fall.

Chair Weathersby closed the public hearing at 10:15 p.m. She stated that she does not think they need 203.3 F relief for lot area and frontage.

The Board agreed.

Speaking to the Millers, Member Durkin asked when they became aware of the plans.

Mr. Miller replied it was in July or August.

Member Durkin asked if the two parties have sat down to review the plans together.

Mr. Laing stated that his wife had a plan in hand when speaking with the neighbors. Many signed that they were in favor of the project. The Millers were also shown the plan.

Mr. Miller stated that he was handed a set of plans. He got back to the Laings after reviewing them for three days and said that he had significant concerns on what was proposed. He did not hear back from them until the filing was done. There was no opportunity for discussion.

Attorney Phoenix stated that out of concern for the Millers' position, this application was continued for two months to meet with them and their lawyers to address their concerns. He heard nothing back from them until recently when Attorney Puffer called with a proposal. There was nothing really to discuss because there was nothing that would be satisfactory to the Millers that was close to what was being done.

Mr. Weinrieb noted that in February the wetlands application was filed, which requires certified letters sent to each and every abutter. The seller of the Millers' property knew of this application. The wetland permit was received before the Millers closed on the property. The Millers should have known about it.

Chair Weathersby reclosed the public hearing at 10:23 p.m.

Member Durkin stated that he does not have a problem with putting in a new septic system and doing something to make the structure more livable. He continued the applicant has every right to rebuild the structure on the existing footprint because that is grandfathered. While he agrees that this is modest relative to other structures in the neighborhood, it is a significant increase relative to the existing footprint. That is what he is struggling with.

Vice-Chair Crapo stated it is modest compared to other structures; however, it is quite an expansion to what is there. Going from the existing size structure to the proposed finish structure, in his mind, there is fluff. He agrees that relief is needed for the proposed septic. He disagrees that relief is not needed for the septic system because it is replacing what is there. There is no existing system to replace. Full relief would be needed for the septic for any size modern structure. He agrees the existing structure is small; however, this is asking for too much.

Member Mikolaities agreed. He has no problem with the septic system. He has no problem with raising the house in place and fixing it. He is not a fan it expanding three times.

Vice-Chair Crapo commented that in looking at Exhibit 4, it looks like the addition at least doubles what is there.

Member Hoyt stated it is a sensitive area. All the homes in that area are dealing with a sensitive area. This is a 1700sf total addition that includes the screened porch. The living space is probably actually around 1300sf. He does not have a problem with the size of the addition. He does not have a problem with the septic system. He knows the site is sensitive due to where it is located. He probably would've done everything in his power to stay away from the neighbor. He thinks that what is being proposed is going to make the situation better, not only from an environmental point of view, the massing and volume, (yes it will be bigger), but will be easier to look at because it is not going to be as run down. He continued that he feels for the Millers. He understands that tripling the size of the square footage is an impact. However, he does not think it will disturb their views as much as they think it will. There will be a better looking building that will have a better impact on the environment. There are still major view corridors all throughout that area. He is struggling with being onboard with the project. However, he thinks the applicant should be able to enjoy the property and they have history on that site.

Chair Weathersby stated the lot has many challenges. The lot is small and is entirely in the buffer. The whole property is in the wetland buffer. There is a house there that is being used as a dwelling and that should be allowed to continue, therefore, there should be a good septic system. She does not have a problem with the septic system. She does not have a problem with continuing to use the existing house as a dwelling. She does not even have a problem with the building turning a little and moving away from the wetland. That might be good for the resource. She has a hard time with the addition. That will intensify the use. It increases the non-conforming use. It is a much bigger house. It is almost triple the square footage. It overburdens the land and will be used more heavily than it is now. A larger house will allow for a lot more visitors and activity. It may affect property values of the Millers. The fact that the Millers have said they would not have bought their house had they known, says that there is an impact on property values. Mr. Stanhope did a good job on the appraisal but it went to market values in the neighborhood. He didn't appraise the Millers' home before and after. If that had been done, she feels there would have been a value effect on their land. She continued that she loves the design. It is a very cute use of space. It is a two bedroom but could easily morph into three or four bedrooms. The addition is just too much for that property, which is entirely in the wetlands buffer.

Vice-Chair Crapo stated that he had a slightly different take, as far as property value for the Millers. The Millers bought a substantial home. They had the means to do their due diligence. It would be very naïve to think this structure next door is going to rot and fall away into the marsh and be gone. At a minimum, someone would renovate it and keep it up. Any buyer of the abutting property knew this was there. It is a complete separate structure and may evolve with time. As it relates to other property, in looking at the map, this sits marginally closer to the marsh. Other homes sit a little higher but are not "in the marsh". This is very close to being in the marsh.

Chair Weathersby commented it struck her that when she went out to the property and the tide was high, how much water was on the lot. There was an island and there was water to the right where the septic would be located.

There was discussion on whether to vote separately on the septic request. After discussion, it was agreed to vote on the septic separately with some variances being voted together.

Chair Weathersby called for a vote for variances to *Sections 603.1 and 603.2*:

1) The variances are not contrary to the public interest?

Shawn Crapo – No
Tim Durkin – No
Gregg Mikolaities – No
Charles Hoyt – Yes
Patricia Weathersby – No

2) The spirit of the ordinance is observed?

Shawn Crapo – No
Tim Durkin – No
Gregg Mikolaities – No
Charles Hoyt – Yes
Patricia Weathersby – No

3) Substantial justice is done?

Shawn Crapo – No
Tim Durkin – No
Gregg Mikolaities – No
Charles Hoyt – Yes
Patricia Weathersby – No

4) The values of surrounding properties are not diminished?

Shawn Crapo – No
Tim Durkin – No
Gregg Mikolaities – No
Charles Hoyt – Yes
Patricia Weathersby – No

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

Shawn Crapo – Yes
Tim Durkin – No
Gregg Mikolaities – No
Charles Hoyt – Yes
Patricia Weathersby – No

- 6) **There is no fair and substantial relationship between the general purposes of the ordinance provision and the specific application of that provision to the property?**

Shawn Crapo – No
Tim Durkin – No
Gregg Mikolaities – No
Charles Hoyt – Yes
Patricia Weathersby – No

- 7) **The proposed use is a reasonable one?**

Shawn Crapo – No
Tim Durkin – No
Gregg Mikolaities – No
Charles Hoyt – Yes
Patricia Weathersby – No

- 8) **Therefore, literal enforcement of the ordinance would result in unnecessary hardship?**

Shawn Crapo – No
Tim Durkin – No
Gregg Mikolaities – No
Charles Hoyt – Yes
Patricia Weathersby – No

Chair Weathersby called for a vote for variances to *Sections 301.8 B(1) and (7)*, for the dwelling:

- 1) **The variances are not contrary to the public interest?**

Shawn Crapo – No
Tim Durkin – No
Gregg Mikolaities – No
Charles Hoyt – No
Patricia Weathersby – No

2) The spirit of the ordinance is observed?

Shawn Crapo – No
Tim Durkin – No
Gregg Mikolaities – No
Charles Hoyt – No
Patricia Weathersby – No

3) Substantial justice is done?

Shawn Crapo – No
Tim Durkin – No
Gregg Mikolaities – No
Charles Hoyt – No
Patricia Weathersby – No

4) The values of surrounding properties are not diminished?

Shawn Crapo – No
Tim Durkin – No
Gregg Mikolaities – No
Charles Hoyt – Yes
Patricia Weathersby – No

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

Shawn Crapo – No
Tim Durkin – No
Gregg Mikolaities – No
Charles Hoyt – Yes
Patricia Weathersby – No

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

Shawn Crapo – No
Tim Durkin – No
Gregg Mikolaities – No
Charles Hoyt – Yes
Patricia Weathersby – No

7) The proposed use is a reasonable one?

Shawn Crapo – No
Tim Durkin – No
Gregg Mikolaities – No
Charles Hoyt – Yes
Patricia Weathersby – No

8) Therefore, literal enforcement of the ordinance would result in unnecessary hardship?

Shawn Crapo – No
Tim Durkin – No
Gregg Mikolaities – No
Charles Hoyt – Yes
Patricia Weathersby – No

Chair Weathersby called for a vote for variances to *Sections 301.8 B(1), (2) and (7)*, for the septic system and *Section 301.5 A*, cutting of vegetation for the septic (nine continuous months per DES):

1) The variances are not contrary to the public interest?

Shawn Crapo – Yes
Tim Durkin – Yes
Gregg Mikolaities – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

2) The spirit of the ordinance is observed?

Shawn Crapo – Yes
Tim Durkin – Yes
Gregg Mikolaities – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

3) Substantial justice is done?

Shawn Crapo – Yes
Tim Durkin – Yes
Gregg Mikolaities – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

4) The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Tim Durkin – Yes
Gregg Mikolaities – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Tim Durkin – Yes
Gregg Mikolaities – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Tim Durkin – Yes
Gregg Mikolaities – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

7) The proposed use is a reasonable one?

Shawn Crapo – Yes
Tim Durkin – Yes
Gregg Mikolaities – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

8) Therefore, literal enforcement of the ordinance would result in unnecessary hardship?

Shawn Crapo – Yes
Tim Durkin – Yes
Gregg Mikolaities – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

Chair Weathersby called for a vote for Building Code Waivers to 7.9.2.2, 7.9.4.1 and 7.9.4.2:

- Would enforcement of those sections do manifest injustice and be contrary to the spirit and purpose of the building code and the public interest?

Shawn Crapo – Yes

Tim Durkin -Yes

Gregg Mikolaities – Yes

Charles Hoyt – Yes

Patricia Weathersby – Yes

Motion by Shawn Crapo to deny the variances requested from Sections 603.1, 603.2, and as it pertains to the proposed building, 301.8 B (1) and (7). Seconded by Tim Durkin.

Vote: 4-1 Opposed: Charles Hoyt

Motion by Shawn Crapo to grant the relief requested, with the condition per DES approval of nine (9) continuous months limit of use, for variances related to septic to Section 301.8 B (1), (2) and (7), and Section 301.5 and for Building Codes 7.9.2.2, 7.9.4.1 and 7.9.4.2.

Seconded by Tim Durkin.

Vote: 5-0 All in favor.

- 2. Ray's Seafood Restaurant, Inc. for property 1677 Ocean Blvd, Tax Map 13, Lot 12** requests an administrative appeal from the 8-30-2018 Notice of Violation by the building inspector. **Property is in the Commercial and Coastal Overlay District. Case #45-2018. Continued to February.**
- 3. Carl Boedecker & Erika Pagel for property owned and located at 333 Washington Road, Tax Map 16, Lot 123** requests variances from Section 603.1 for expansion of non-conforming building on non-conforming lot approximately 5.6' toward the side yard to the east and 4' toward the front to the south; from Section 203.3B for a new attached barn in the side setback where 20'2" exists, 14'10" is proposed and 20' is required; from 203.3C for new attached barn in the front setback where 31'3" exists, 27'2" is proposed and 40' is required; from Section 500.3 for parking within the 40' front yard, within 10' of lot line. **Property is in the Single Residence District. Case #01-2019. Continued to February.**
- 4. Starr Family Rev Trust, Geoffrey Star, Trustee for property owned and located at 96 Pioneer Road, Tax Map 22, Lot 79** requests variances from Section 203.3 F for lot area of 27,266sf where 66,000sf is required and from Section 603.1 to tear down the existing structures and replace with new within the building setbacks. **Property is in the Single Residence District. Case #02-2019.**

Geoffrey and Kelly Starr, applicants, were present to address questions from the board regarding their application. (Mr. Starr noted the location for the lot line adjustment on the plan for the board.)

In regards to the request for variance to 603.1, Vice-Chair Crapo noted this is for a tear down and rebuild of a non-conforming structure. In this case, they are wiping out the non-conforming structure. He does not think they need 603.1, unless part of it is still going to be non-conforming.

Chair Weathersby agreed.

Member Hoyt asked if it is a conforming lot.

Mr. Starr replied that one of the lots will still be too small and will be non-conforming.

Chair Weathersby explained the lot will still be non-conforming but it will be less non-conforming. There is currently a building on the lot, which will be torn down. If they build something in the building envelope, they will not need to come back.

Member Durkin asked if this is true even if it is still a non-conforming lot.

Chair Weathersby pointed out that this is why they are asking for relief from 603.1.

Vice-Chair Crapo explained the variance would allow them to put a structure on a non-conforming lot. Does that structure need to come before the Board? He thinks the board's interpretation is only if it needs further variance relief.

Member Mikolaities noted that 603.1 is for expansion of a non-conforming. This is a non-conforming lot. The permission would be for building on that lot, not for expansion.

Mr. Starr replied he is looking to rebuild.

Chair Weathersby reviewed Section 600 of the ordinance. She stated she does not believe they need 600 relief at all.

Planning/Zoning Administrator Reed explained that the Starrs will need to go to the Planning Board for the lot line adjustment. The reason they are before the ZBA is because they have a non-conforming lot. Although they are making it more conforming, it will still be a non-conforming lot. The Starrs said that they were going to be tearing down the house on this non-conforming lot. In the past, the building inspector has made everything go for 603.1. Since they were coming before this Board for the lot line adjustment, she thought they should ask for 603.1 at the same time. Right now, they don't have building plans, as it is just a thought. She noted that it was her suggestion for the Starrs to ask for that.

Chair Weathersby stated she does not think they need relief from 603.1. The board should probably get clarification on this for future cases. It is clearly making the lot more conforming

and getting rid of the house that is in the setbacks. She asked the Board if they felt 603.1 is needed. She asked Chuck Marsden, building inspector, his thoughts.

Mr. Marsden stated with the lot line adjustment it will still be a non-conforming lot. Then the applicant is tearing the house down. As long as they meet all the requirements, such as setbacks and pervious coverage, he does not think they need 603.

Vice-Chair Crapo noted that 203.3 is needed and then it goes to the Planning Board. After that time, the Starrs will need to come up with plans and go to the building inspector. In the meantime, they or the building inspector, can get an opinion on whether further relief is needed. Worst case scenario, they go in with plans for a building permit, get denied, and they have to come back to the Board.

The Board determined that no relief from Section 600 of the zoning ordinance is necessary, provided the home that will be constructed meets all building setbacks, and coverage requirements, etcetera. The Board agreed to vote on the request for Section 203.3 F.

Chair Weathersby called for a vote for variance to *Section 203.3 F*:

1) The variance is not contrary to the public interest?

Shawn Crapo – Yes
 Tim Durkin – Yes
 Gregg Mikolaities – Yes
 Charles Hoyt – Yes
 Patricia Weathersby – Yes

2) The spirit of the ordinance is observed?

Shawn Crapo – Yes
 Tim Durkin – Yes
 Gregg Mikolaities – Yes
 Charles Hoyt – Yes
 Patricia Weathersby – Yes

3) Substantial justice is done?

Shawn Crapo – Yes
 Tim Durkin – Yes
 Gregg Mikolaities – Yes
 Charles Hoyt – Yes
 Patricia Weathersby – Yes

4) The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Tim Durkin – Yes
Gregg Mikolaities – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Tim Durkin – Yes
Gregg Mikolaities – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Tim Durkin – Yes
Gregg Mikolaities – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

7) The proposed use is a reasonable one?

Shawn Crapo – Yes
Tim Durkin – Yes
Gregg Mikolaities – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

8) Therefore, literal enforcement of the ordinance would result in unnecessary hardship?

Shawn Crapo – Yes
Tim Durkin – Yes
Gregg Mikolaities – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

Motion by Shawn Crapo to grant the relief requested by the Starr Family Revocable Trust, Geoffrey Starr, Trustee for property owned and located at 96 Pioneer Road, Tax Map 22, Lot 79 to Section 203.3 F. Seconded by Tim Durkin. All in favor.

5. **Lisa Lomard for property owned and located at 1248 Ocean Blvd, Tax 17.3, Lot 148** requests variances from Section 603.1 for expansion of a non-conforming structure; from Section 304.4 for height where 28.85' exists, 33.16' +/- is proposed and 18' is required; from Section 204.3 B for a retaining wall with a 3.72' right setback, for steps with a 5.8' right setback, for a house with a 6.59' right setback and for an addition with a 8.8' left setback where 20' is required; from Section 202.5 for a septic system with a 10.84' side setback where 20' is required and relief from Building Code Section 7.9.2.5 for a septic system with a 10.84' side setback where 20' is required. **Property is in the General Residence, Coastal Overlay District and Special Flood Hazard Zone. Case #03-2019. Continued to February.**

6. **Rannie Webster Foundation d/b/a Webster at Rye for property owned and located at 795 Washington Road, Tax Map 11, Lots 52 & 6** requests a Special Exception from Section 203.2 C, 604, and 701.3 for a nursing home where 51 beds exist, 21 new beds are proposed for a total of 72 beds; for assisted living beds where 84 exists, 2 new beds are proposed for a total of 86 beds; and for square footage building expansion where 108,017sf exists, 18,324 new square footage is proposed for a total of 126,341sf. **Property is in the Single Residence District. Case #04-2019. Continued to February.**

7. **Brian & Diane Ferguson for property owned and located at 60 Parkridge Ave, Tax Map 19.4, Lot 17** request variances from Section 603.1 for expansion of a non-conforming structure; from Section 301.8 B (1) & (7) for surface alteration for a garage and driveway within the 75' wetlands buffer. **Property is in the General Residence, Coastal Overlay District. Case #05-2019. Continued to February.**

IV. Other Business

The Board discussed the letter received from Dennis McCarthy, Public Works Director, in regard to stormwater management on small lots.

Chair Weathersby explained that Mr. McCarthy's concern is that the Board gives a variance and then the building inspector requires a stormwater management plan. The applicant has already been given permission for what they need to do and then they do the stormwater plan. Mr. McCarthy would like it to be looked at sooner. She suggested that as part of the application process, an applicant submit a stormwater management plan if they are requesting relief to lot coverage or setback requirements of the zoning ordinance, if the lot does not meet the minimum size.

Vice-Chair Crapo noted that the building department is the first step. No one can come before the Board without a denial from the building office. When it is reviewed, and they deem that it

meets the criteria that the Public Works Director is concerned with, that should be added to the denial letter.

Chair Weathersby commented that this gives the Board cover to ask for it. The Board cannot require a stormwater management plan upfront. However, if the building department is saying it is going to be required, the Board can ask for it earlier. If they are asking for lot coverage relief, dwelling coverage relief or building in the setbacks, they should submit a stormwater management plan as part of the application upfront so the Board can look at it.

Vice-Chair Crapo stated that the application could be changed to say that if a stormwater management plan is going to be required by the building inspector, the application package requires a plan for the Board. That way the application is not picking and choosing who will require a plan and who will not.

Chair Weathersby commented they could require it for everyone; however, she was trying to make it less onerous.

Member Mikolaities stated that this is going down a slippery path because of storm intensity and sensitive areas. There could be more stormwater runoff from a "mcmansion", (5,000sf house, circular drive, patio and pool), than any house of 2700sf. He understands Mr. McCarthy's concern but they have to be careful.

Chair Weathersby stated that the procedural rules allow an applicant to request a waiver from the requirements. If the building office thinks it is necessary and are going to require one, they can have the applicant do one or they can request a waiver.

Chair Weathersby took a poll of the Board in regards to adding this to the application checklist. It was agreed it should be added.

Adjournment

Motion by Tim Durkin to adjourn at 11:40 p.m. Seconded by Charles Hoyt. All in favor.

**All corresponding files and documents may be viewed at the Building Department, Rye Town Hall.*

Respectfully Submitted,
Dyana F Ledger

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/ Owner: Donald K. Laing Revocable Trust, T. Beaton & Scott Laing, Trustees of 21 Whippoorwill Drive, Newton, NH

Property: 140 Harbor Rd, Tax Map 9.2, Lot 17
Property is in the Single Residence, Coastal Overlay and SFHA, Zone AE.

Application case: Case #44-2018

Date of decision: January 2, 2019

Decision: **Relief Granted:**

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

- Section 301.8 B (1)(2) and (7) for surface alterations for and the installation of a septic tank 50' from tidal wetlands and for a leach field 60.6' from tidal wetlands and 44.6' from freshwater wetlands; and
- Section 301.5 A for the cutting of shrubs and the herbaceous layer within the border zone of the tidal marsh for the installation the proposed septic system.

The Board voted 5-0 to grant Building Code relief from the following sections of the Building Code for a septic tank 50' from tidal wetlands and for a leach field 60.6' from tidal wetlands and 44.6' from freshwater wetlands:

- Section 7.9.2.2
- Section 7.9.4.1
- Section 7.9.4.2

The above Zoning Ordinance variances and Building Code relief were each granted upon continued compliance with the condition that the dwelling located on the property be occupied for no more than nine (9) continuous months per year.

Relief Denied:

The Board voted 4-1 to deny variances from the following sections of the Zoning Ordinance:

- Sections 603.1 and 603.2 for expansion and/or rebuilding of a non-conforming structure on a non-conforming lot;
- Sections 301.8 B (1) for surface alterations within the freshwater and tidal wetland buffers and 301.8 B (7) for the expansion and relocation and/or rebuilding of the seasonal dwelling 22.4' from the freshwater wetland and 22.9' from the tidal wetland and entirely within the wetlands buffer.

The Board denied the above variances as the requests failed to satisfy the criteria for granting variances – the specific reasons include:

1. The relocation and expansion of the existing dwelling and related construction activities less than twenty-three feet from both freshwater and tidal waters and entirely within the protective buffer zones for such waters are contrary to the public interest.
2. The relocation and expansion of the existing dwelling and related construction activities less than twenty-three feet from both freshwater and tidal waters and entirely within the protective buffer zones for such waters violate the spirit of Rye's zoning ordinance.
3. The proposed larger home, together with the approved septic system, overburdens the approximately 15,000 SF of uplands on the property, all of which are located in the wetlands buffer.
4. The proposed dwelling, enlarged by approximately 200%-300%, would result in too great an intensification of the use of the property.
5. Denying the variances does not create an unnecessary hardship to the applicant; the applicant may continue to use the dwelling presently located on the non-conforming lot.
6. The Applicant failed to prove that values of the surrounding properties, particularly the abutting property of the Miller's, will not be diminished if the variances were to be granted. The Miller's testimony that they would not have purchased their property had they known of the proposed construction and of the effects the proposed dwelling will likely have on their use and enjoyment of their property indicate a likely property value affect. While the appraisal by the Stanhope Group concluded that the market values of properties in the neighborhood generally would not be affected, it did not specifically evaluate the effects on properties of any abutter, including the closest abutter, the Millers.
7. There are no special conditions of the subject property that distinguish it from other properties in that area. Many homes in that area are affected by wetland restrictions.
8. The relocation and expansion of the existing dwelling is not a reasonable use of the property given its proximity to freshwater and tidal wetlands.
9. The loss to the applicant by denying the variances (unable to have a larger home) is not outweighed by the gain to the general public of protecting its wetlands.
10. Granting the variances would threaten the public welfare.
11. The Applicant failed to prove that there is no fair and substantial relationship between the general purposes of Zoning Ordinance section 603.1, 603.2, 301.8B (1) or 301.8B (7) and the specific application of each of these sections to the subject property.



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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

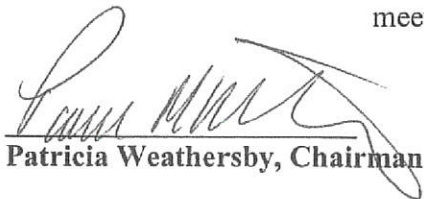
Applicant/ Owner: Brian & Diane Ferguson

Property: 60 Parkridge Ave, Tax Map 19.4, Lot 17
Property is in the General Residence & Coastal Overlay

Application case: Case #05-2019

Date of decision: January 2, 2019

Decision: The Board voted 5-0 to continue the application to the February 6, 2019 meeting.



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.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

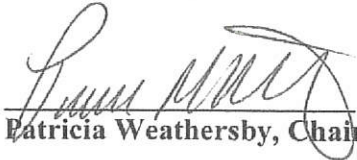
Applicant/ Owner: Rannie Webster Foundation d/b/a Webster at Rye

Property: 795 Washington Road, Tax Map 11, Lots 52 & 6
Property is in the Single Residence District

Application case: Case #04-2019

Date of decision: January 2, 2019

Decision: The Board voted 5-0 to continue the application to the February 6, 2019 meeting.



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.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/ Owner: Lisa Lombard

Property: 1248 Ocean Blvd, Tax Map 17.3, Lot 148
Property is in the General Residence, Coastal Overlay and SFHA.

Application case: Case #03-2019

Date of decision: January 2, 2019

Decision: The Board voted 5-0 to continue the application to the February 6, 2019 meeting.



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.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/ Owner: Starr Family Rev Trust, Geoffrey Starr, Trustee


Property: 96 Pioneer Road, Tax Map 22, Lot 79
Property is in the Single Residence District

Application case: Case #02-2019

Date of decision: January 2, 2019

Decision: The Board voted 5-0 to grant a variance from the following section of the Zoning Ordinance:

- Section 203.3 F for building lot with an area of 27,266 S.F.



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.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

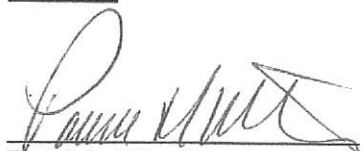
Applicant/ Owner: Carl Boedecker & Erika Pagel

Property: 333 Washington Road, Tax Map 16, Lot 123
Property is in the Single Residence District

Application case: Case #01-2019

Date of decision: January 2, 2019

Decision: The Board voted 5-0 to continue the application to the February 6, 2019 meeting.



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.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

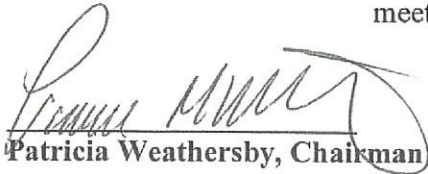
Applicant/ Owner: Ray's Seafood Restaurant, Inc.

Property: 1677 Ocean Blvd. Tax Map 13, Lot 12
Property is in the commercial and coastal overlay districts and SFHA.

Application case: Case #45-2018

Date of decision: January 2, 2019

Decision: The Board voted 5-0 to continue the application to February 6, 2019 meeting.



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.