

TOWN OF RYE – ZONING BOARD OF ADJUSTMENT
WEDNESDAY, JANUARY 4, 2017
7:00 P.M. - RYE TOWN HALL

Members Present: Chair Patricia Weathersby, Vice-Chair Paul Goldman, Clerk Burt Dibble, Shawn Crapo, Patrick Driscoll and Alternate Charlie Hoyt

Also Present: Zoning Administrator Kimberly Reed

I. Pledge of Allegiance

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

II. Approval of Minutes:

- **December 7, 2016**

Motion by Shawn Crapo to approve the minutes of December 7, 2016 as amended. Seconded by Burt Dibble. Vote: 4-0-1. Abstained: Paul Goldman

- **September 7, 2016**

Motion by Paul Goldman to approve the minutes of September 7, 2016 as amended. Seconded by Burt Dibble. Vote: 4-0-1. Abstained: Shawn Crapo

III. Applications:

- 1. Alex & Joanne Zadeh for property owned and located at 245 Pioneer Road, Tax Map 24, Lot 118 request an Administrative Appeal of the July 11, 2016 Building Inspector's Notice of Violation of the Rye Zoning Ordinance Section 301.8 (B) 5 and the August 1, 2016 Building Inspector's Notice of Violation II of Section 301.8 (B) 5. Property is in the Single Residence District. Case #56-2016.**

- **Withdrawn**

- 2. Roberta L. Lannie, David W. Blodgett, Jr. and Erin E. Blodgett owners for property located at 13 Ocean View Ave, Tax Map 19.4, Lot 38 request Variances from Section 603.2 to demolish an existing non-conforming building and replace it with a new building; from Section 202.5 for a septic system in the rear boundary where 5.6' +/- exists, 5.6' is proposed and 20' is required; from Section 204.3A for rear setback where 19.5' exists, 19.3' is proposed and 30' is required; from Section 204.3B left side yard setback where 20' exists, 19.5' is proposed and 20' is required; and on the right side where 11.8' exists, 11.5's is proposed and 20' is required; relief from the Building Code Section 7.9.2.5 for septic system**

rear setback where 5.6' +/- exists, 5.6' is proposed and 20' is required; from Section 7.9.3.1 for a distance of septic to bed bottom from bedrock where 4.3' +/- exists, 4.3' is proposed and 6' is required and from Section 7.9.3.2 for septic design criteria where 2' +/- exists, 2' is proposed and 4' above seasonal high water table is required. **Property is in the General Residence and Coastal Overlay District. Case #64-2016.**

Attorney Tim Phoenix, representing the applicant, presented to the Board. He explained that the application was before the Board on October 5th. A full presentation was made for relief to replace, on the existing foundation, the small bungalow style home with a small 1.5 story home. The home will be going from three bedrooms to two bedrooms. The septic at the rear of the property is being replaced in the location of the existing septic system, which has failed, with a new advanced treatment system. His sense of the Board at that time, was that the Board was comfortable with the relief requested; however, not so much for the leach field that is on the property for the neighbor across the street. The majority of the Board wanted more information before making a final decision. (He submitted a copy of the Notice of Decision from the October meeting to the Board.) He stated that he is before the Board to address all the issues on the notice with the understanding that the Public Hearing is closed and the criteria does not have to be readdressed.

Attorney Phoenix stated that at the October 5th meeting there were four issues the Board wanted resolved.

1. Any relevant easement deeds concerning septic systems on the property;
2. Septic design plans that account for the entire effluent disposal situation on the property;
3. Assurance that NHDES has accounted for the entire effluent disposal situation on the property in its approval of the proposed septic system; and
4. Plans depicting the proposed home as having two (2) bedrooms.

He noted that he has submitted a copy of the replaced floor plan showing two bedrooms, where three were shown on the original submitted. It is his position that the only things that are outstanding are the septic related issues. The overall concern was that the applicant submits that the DES knew there was another system, at least partially, on the site and they were okay with that. The Board wanted some clarity on this issue. (He read an email from **Rob Tardif, NHDES Administrator**). He noted that Susan Faretra, Faretra Septic Designs, has done a lot of work on the system, including having it inspected and having test pits done. He also noted that the original approval from DES was only for 90 days and it has expired. The plans include that design, for which they are asking for approval, and a design for Mr. Jones across the street, which is being submitted for informational purposes to the DES. The plans have not been submitted to the DES because the applicant wanted to bring this before the BOA first to make sure all issues have been addressed.

Referring to the septic plans, **Susan Faretra** stated that the first two sheets are the Blodgetts' original plan with the addition of Mr. Jones' property and his existing septic system. Once it was known where Mr. Jones' leachfield was located, the sump pump drain for the new house was moved since it was originally in Mr. Jones' leachfield. It is now located on the other side of the house and a request has been made for a DES waiver for the drain.

Member Crapo asked if there is any town relief needed for the drain.

Ms. Faretra replied no.

Ms. Faretra stated there is a 25ft separation requirement and she is requesting a waiver for 15ft. She continued that she went through the process of designing a future system for lot 16. Test pits were done and witnessed by the town. The distribution box for Mr. Jones' system was found so it is known where that starts. She explained that she discussed the new system for Mr. Jones with the pre-treatment company that is going to be doing the clean solution tank for lot 13. They have reviewed this plan. She has also had a lot of conversation with Ken Aspen from the Rye Water District because there is a crossing of water and sewer lines, which has existed for some time. Mr. Aspen has recommended words that he would like to see on the plans to fix that situation. (She pointed out the notes on the plans that were requested by the Water District.) When a system for lot 16 goes in, there is going to have to be an upgrade of the water lines and shutoffs. Also, the sewer line is going to have to be sleeved, which will also meet the DES requirements as well. The plans have gone through town review with both Ken Aspen and Dennis Plante, who have signed off on it.

Member Crapo asked if the two systems end up independent of each other.

Ms. Faretra replied they are independent of each other. The reason they were not combined into one larger system is in case the other party does not take care of their system properly. This way it is really clear, if there is a problem in the future, as to whose problem it is. She pointed out that DES is very aware there are two septic systems on this lot. Their feeling is if there is a legal easement, they cannot undo that.

Chair Weathersby asked if she is confident that the Blodgett lot can support the two systems.

Ms. Faretra explained the test pits came out good. The water table was reasonable for the area. This is the only system she would consider to make this a successful situation.

Referring to Mr. Jones' current system, Member Crapo asked if it is her belief that the system has not failed and is slated to have to be replaced.

Ms. Faretra confirmed. She stated there was no sign of failure. When the distribution box was dug up they did see the stone and the pipes that were bedded in it. There was no sign of effluent and any sign of past water in there. She reiterated that she saw no sign of failure. The plan shows a future design for Mr. Jones' system.

Attorney Phoenix stated that it is his position that the Jones' system should not have been a part of any discussion because it is not in failure. It is not what is being applied for. The Board asked if the State knew what was going on. Now the State knows what is going on. Mr. Tardif's email specifically says the applicant's system can go in and the other system can stay there, unless it is in failure. There has been testimony confirming that the system is not in failure. He believes they have met the State requirements and the Board's concern on whether the State knows what is happening. He asks that the proposal be approved. The approval is for the Blodgetts' septic system and house changes.

Member Crapo asked if Mr. Jones is okay with this plan.

Attorney Phoenix stated he personally met with Mr. Jones, along with Chip and Susan, to explain all this to him. He was fine with it. Susan spoke with him at length before this meeting. He decided not to attend this meeting because he was fine with the proposal.

Planning Administrator Reed noted that Mr. Jones was in the Building Department to sign some paperwork on this and is happy with the plan.

Chairman Weathersby asked if there was any way to design the system so it was further than 2ft from the high water table.

Ms. Faretra explained that it could be lifted up further. It would mean that they would have to be sure to adjust the house to accommodate for the back fill for the system. She questions why this would be necessary. She pointed out that a non-pretreatment system can be replaced 2ft from the water table in Rye. This does go the extra length with the pretreatment. She does not know that it would serve any environmental purpose. She continued it would also make it a little more difficult to grade. The system is graded to the property boundary right now with a short fill extension and a 2 to 1 slope. The higher it goes the longer the fill extension. There will be some trouble with grading.

Vice-Chair Goldman asked if there would be more runoff issues.

Ms. Faretra explained it might be water. It might be mowing. The steeper the grade the harder it is to deal with in general.

Member Driscoll clarified that she thinks the 2ft will be fine, not the 4ft that is required by the town.

Ms. Faretra stated that with pretreated systems the State is fine with 2ft. She does not know that 4ft is really necessary.

Member Driscoll clarified that the abutters system is no closer than the 2ft.

Ms. Faretra confirmed. She commented that 2ft is the minimum that can be approved.

Chair Weathersby opened to the public for comments or questions regarding the septic system issue. Hearing none, she closed the public hearing at 7:42 p.m.

Speaking to the Board, Chair Weathersby asked if there were any questions on the house plans.

Member Crapo stated the main concern was the quirkiness of the neighboring property having the right to have a leachfield on the property. Given that they found that the pump needed to be moved, it wasn't a complete wasted effort. It better protects the interest the Board is trying to protect.

Chair Weathersby commented she feels more comfortable knowing the full situation. She asked the Board if they are comfortable with the four things that they were asked to provide. She pointed out that the NHDES has not issued an approval but they will be approving based on the plans submitted.

It was the consensus of the Board that the applicant had submitted what was requested.

Chair Weathersby called for a vote on variances to *Sections 603.2, 202.5, 204.3A, 204.3B*:

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

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

2. The spirit of the ordinance is observed?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

3. Substantial justice is done?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

4. The values of surrounding properties are not diminished?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

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

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

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

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

7. The proposed use is a reasonable one?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

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

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

Chair Weathersby called for a vote on Building Code Waivers to 7.9.2.1, 7.9.3.1 and 7.9.3.2:

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

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

Motion by Shawn Crapo to approve the application as advertised and discussed with the following conditions; all applicable septic approvals are received from the State and Town for 13 Ocean View Avenue, Tax Map 19.4, Lot 38, along with the NH DES approval for the sump pump drain. Seconded by Paul Goldman. All in favor.

- 3. John E. McCune, Jr. Revocable Trust, John E. McCune, Jr., Trustee for property owned and located at 243 Parson Road, Tax Map 19, Lot 103 requests a Special Exception from Section 301.7 C and from Section 301.8B.6 for an accessory building 16'+/- from the wetlands where 75' is required. Applicant requests Variances from Section 204.3 A for building 2.2' from the rear yard setback where 30' is required; from Section 204.3B for building 19.2' from the side yard setback where 20' is required and from Section 301.8B.1 for surface alteration within the 75' buffer. **Property is in the General Residence, Coastal Overlay District, SFHA Zone AE (9). Case 69-2016.****

Attorney Phoenix, representing the applicant, spoke to the Board. He submitted a letter of support from the Carberry's who abut the property in the front to the right. He explained the house and garage have been in their existing location for many years. There is a red dash line on the plans that show the setbacks. It shows a very small building envelope. For many years, there was a barn in the far right area with a horse stall and paddock. It is believed to be somewhere around the rear property line. He noted that the McCune's always believed they owned to the rear. There is a triangular piece that was found that they did not own it, after a survey was completed, although the tax maps show that they do own it. There is some question on whether the State owns the land. The State takes the position that they do not own it. The McCune's are working with the State to resolve the issue and get the piece deeded to them. He continued that the McCune's believed they owned the land all the way back. In about 2009, Mr. McCune took the barn down and moved its skeleton to the other side of the property, where it now exists and is shown on the plan. There is some gravel and fill in the area of the back. There is some gravel and fill in the front towards Parsons Road. Mr. McCune drives out back to access the shed from time to time. The Conservation Commission has looked at this and have submitted a letter.

Attorney Phoenix stated that request is to have the shed approved in the existing location with the access ways. The gravel areas where the old barn was outback would be loamed and seeded. The specific relief being requested is to 204.3A for the rear yard. The existing is 2.2ft and the required is 30ft. He pointed out that when Mr. McCune put the shed where it is he thought there was 20 or more feet to the rear property line. He needs a side yard setback of just less than a foot. It is 19.2ft from the side line, where 20ft is required. The shed is an accessory building, as is the driveway to it, which is permitted by special exception. It replaces a long existing structure which was also in close proximity to the wetlands. It was in the wetland buffer. The final relief is to 201.8B (1) for surface alteration. It is difficult to tell where or when fill was put in. Some of the fill was put in by the former owners. Some of it was by the McCune's. Overall, they feel it is best to leave the shed where it is and ask for the variances.

Steve Riker, NH Certified Wetland Scientist, Ambit Engineering, stated he performed the wetland delineation on the parcel. He continued that it is very difficult to tell when fill may have been placed on the site. Aerial photos are the best way to determine that; however, the photos that he reviewed are not conclusive. In terms of removing the fill, he does not know that this would be the right thing to do in this situation. Removing the gravel, loaming and seeding is certainly a much better option in this case.

Member Crapo asked if the fill is all contained in the buffer versus the actual wetlands.

Mr. Riker explained it is difficult to tell where the wetland boundary may have once been. It is difficult to tell how the fill was historically placed. The gravel is not in the wetland area; however, there is speculation that the gravel area may be an area of fill that was placed in the wetland historically. He continued the wetland boundaries were delineated based upon the three criterion for wetlands; hydrophytes vegetation, hydric soils and evidence of hydrology.

Chair Weathersby asked if the shed is 19.4ft from the wetlands.

Mr. Riker confirmed.

Chair Weathersby asked if there would be less of an impact to the wetlands if the shed was moved to the eastern side, where the barn once was. She asked if this would be further from the wetlands and improve the situation.

Mr. Riker commented it would be further away. He continued that the impacts to the wetlands would be from stormwater that would come off the shed and make its way to the wetlands. In his opinion, it is such a small surface. The roofline runs east to west. Half of the runoff would go to the wetlands and the other half would go the other way. Moving the shed to the other side of the property will present the same situation. It is still in close proximity to the wetlands. He does not think there is an advantage to moving the shed. It is tough to speculate the amount of stormwater that would come off a shed of that size and its impacts. It is so miniscule it would be tough to quantify.

Chair Weathersby asked about the impact from driving vehicles back for access or storing lawn mowers with gasoline in them. The Board has not yet heard what the shed will be used for.

Mr. Riker commented if it is a shed being used for storage of a lawn mower or snow blower, he does not see how it would be harmful to the wetlands. If things like that were stored outside, then it would present an issue.

Member Driscoll asked how removing the fill will have a negative effect on the wetlands.

Mr. Riker explained that a fairly large excavator would be needed. Underneath the fill is a natural organic layer, which would indicate where the historic wetlands are located. He does not think there is much to gain from all that activity of work in that area. He does not think it would be worth the impacts from removing all that material and trucking it off site. It is not an extremely large area. The wetlands that surround this area appears to be healthy. Removing a lot of fill in an area would open it up to invasive species.

Chair Weathersby asked what the shed is used for.

John McCune, applicant, explained it is used for patio furniture, lawn mower and garden tools.

Vice-Chair Goldman asked when the shed was moved.

Attorney Phoenix replied 2009.

John Chagnon, Ambit Engineering, submitted a copy of the survey that was provided by the Department of Resource and Economic Development (DRED). He stated he has an exhibit that shows the property in question and how it relates to that boundary. Exhibit 4 shows a line that cuts very close to the shed. On the plan, there are two pipes that are out further from the deeded property line. The plan shows a gravel square where there used to be a structure. The owner put the shed in an area that was further away from the boundary than indicated on the survey. The pipes are also noted on the survey plat. On the DRED survey, the red indicates the McCune property based on the deed dimensions. The green line is DRED's property line as they understand it to be. The blue is the area in between the two properties that the McCune's assumed was a part of their property. This is one of those survey anomalies where there has been an error in a measurement or deed. The State does not think they own that piece based upon their own survey. He pointed out that tax map shows the McCune's own it. The relief for the setback to the rear, of 2.2ft, seems close but the McCune's thought it was more like 20ft.

Chair Weathersby asked when the issue of who owns the triangle will be resolved with the State.

Mr. Chagnon stated the State seems to be happy with their survey. He does not think they are going to make a claim. The applicant is probably going to move forward with making a claim.

Chair Weathersby stated this may make a difference on whether the variance would be for 2.2ft or 19.4ft., if it is granted at all. She commented the Board could wait for a resolution.

Member Crapo commented that whether it is 2.2ft or 19.4ft, the fixed points don't change. The 19.4ft goes to the wetland line. The 2.2ft goes to the property line. The wetlands line seems to lie right across the property line.

Mr. Chagnon commented the setback to the wetland is not going to change in the property line changes.

Chair Weathersby noted that the Board can't force the applicant to try to obtain this property. That is not the Board's role.

Vice-Chair Goldman stated the Board should not get hung up on this and act on the application like they don't own the triangle.

Member Dibble stated the applicant owns to where they own on the ground and there is more space before the marsh, which no one is ever going to occupy or do anything with. The facts on the ground represent further separation from the marsh.

Mr. Chagnon stated the shed is 16ft from the wetlands and that would not change. The setback from the property line would still need some relief because the 19.4ft would not meet the criteria of 30ft.

Attorney Phoenix stated they do know where the property lines are according to the deed. His belief is there was a mistake years ago, from some surveyor, who did the southerly line at 150ft where it should've been 195ft. He continued they did not think it was right to claim they own it when there are no documents to prove it. It was best to go with the most conservative approach. He noted that he made a misread the plans and they do not need the side yard setback. The other issue is the notice included, but his didn't, 301.8B (6), which is the provision of the wetland buffer restrictions that allows accessory buildings to be allowed by special exception. He pointed out that he has addressed the special exception.

He stated the McCune's have lived on the property for 21 years. The barn was on the property when they bought it. Mr. McCune has added some gravel out back, to whatever was there, and a little out front, which is fairly distant from the wetland. Mr. McCune has not added any additional fill by the shed. Most of the fill that is there was done by whoever developed the lot, probably in the days when no one was really paying attention to the wetlands. That would explain why it is right up to the wetlands.

Member Driscoll clarified that there were no permits that were pulled for the shed movement.

Attorney Phoenix agreed. Mr. McCune thought it could be done. He did not even realize there was a wetland in that area. Years later, the building inspector came to the property to inspect something else and noticed it. That is when all this came up.

Attorney Phoenix reviewed the requirements for granting the special exception and the variances.

Member Driscoll asked for the lot size.

Chair Weathersby stated it is 19,990sf. including the triangle. She asked for clarification on the gravel.

Referring to the plan, Mr. Riker stated the rectangular area would be removed, loamed and seeded.

Chair Weathersby asked if the rest of the gravel is staying.

Mr. Riker confirmed.

Chair Weathersby asked why a gravel driveway is needed to the shed.

Attorney Phoenix explained that Mr. McCune does take a truck back there occasionally to load and unload lobster traps and other equipment. He noted that there is no prohibition from driving a vehicle in the wetland buffer.

Chair Weathersby noted that 301.7, construction of roads and driveways in the buffer, requires a special exception. She continued that it must be shown that no other route is feasible. There is a paved driveway to the garage already. They can drive over the grass to park the boats.

Attorney Phoenix stated that if nothing was there and this didn't already happen, he would understand. There is already a shed there. The way to access it is to drive straight to it, instead of driving over the lawn. The lawn is going to have the same effect because it goes to the same place.

Chair Weathersby stated she is not so concerned about the shed itself. She is more concerned about the effects on the wetland of people putting in more fill and driving back and forth.

Attorney Phoenix commented if it was a clean slate that would make sense; however, it is worse to undo it then to leave it.

Chair Weathersby asked if all the gravel was added by the McCune's.

Attorney Phoenix explained that they added crushed stone in the back to whatever was already there. This was the paddock area for the barn. At one time, someone added gravel to keep the area from being so muddy. Over time, Mr. McCune put some more crushed stone.

Speaking to the applicant, Chair Weathersby asked how much gravel he added to the lot, other than by the paddock.

Mr. McCune explained that there were some trees taken out in the front yard by Parsons Road and gravel was added.

Chair Weathersby asked if gravel has been added to the gravel drive on the side.

Mr. McCune replied no.

Chair Weathersby asked if the applicant is asking for the gravel access way along the western boundary to be a driveway.

Attorney Phoenix stated it will be left as it is. He explained he used the term "driveway" earlier just because vehicles do go over it and he didn't want to mince words. He reiterated that it is going to be left as it is for occasional access.

Member Driscoll clarified that the shed used to be larger and was located where the camper and boat are now. He asked if fill has been put in that area since the house was bought.

Mr. McCune replied he put crushed stone in.

Chair Weathersby asked what was involved with moving the shed.

Mr. McCune explained that he moved the post and beam and then refinished it.

Speaking to Member Driscoll, Mr. Chagnon clarified that the size of the lot is 19,842sf.

Member Driscoll pointed out the difference from the tax map is only about 100sf.

Mr. Chagnon agreed.

Chair Weathersby opened to the public in favor. Hearing none, she opened to the public in opposition to the application.

Mike Garvan, Conservation Commission Member, stated that when the project was presented to the commission in December, they did not see the DRED maps. This is new information to the commission. A letter has been submitted to the Board from Bob Spurl, Division of Forest and Land, that says they remain neutral on the variance, as long as it does not violate their boundaries. The major concern of the commission is that this is deep within the wetland buffer. The shed is completely in the wetland buffer. Approximately, 40% of the gravel road that runs to the shed is within the wetland buffer. The gravel pad is in the wetland buffer. There is also gravel behind the shed that is also in the wetland buffer. Just because the violations existed, does not mean they have to continue to exist. There has been a lot of about

how there will not be any impact to the wetland or wetland buffer; however, what was addressed was the removal of the gravel and fill. He noted there are vehicles, boats and campers that are parked there. He is concerned where those are going to go once the gravel pad is removed. There is a concern about future storage. What they have been doing, and will continue to do, is to fill up the wetland buffer with stuff. He does not think the effect on the wetlands will be minimal. He continued that if Mr. McCune is found responsible for the filling of the wetlands he should be held responsible for bringing it back to its natural state. There should be just native plantings in the whole disputed area. The commission would also like to see plantings all along the property line to filtrate any chemicals that may be used on the lawn, effluent or gasoline.

Suzanne McFarland, Conservation Commission Member, stated that she has been speaking with NHDES and NHDRED regarding this matter. She noted that this is Odiorne State Park and the State is not giving up any of their boundaries. This land is now on the list to be reblazed (property lines remarked). She continued the DES is waiting to see what the decision is on this wetland buffer. They are pausing to see what happens before acting.

Sally King, Conservation Commission Chair, stated that she wants to contest that the gravel area is not well used. She has a picture showing a trailer and boat to the left of the shed. Two days after the commission held a site walk, there were several vehicles parked in the gravel area as well. (The photo was submitted to the Board.)

Mrs. McFarland commented there is also a snowmobile container parked there on a regular basis.

Chair Weathersby noted that the Board has received a letter from the Carberry's. The Board also has the letter from the Rye Conservation Commission regarding changes to the property, concerns and suggestions. A letter was received from Bob Spurl, NH DRED. (She read Mr. Spurl's letter for the Board.)

Member Crapo stated there is a dispute over the location of the boundary. The case may need to be continued to determine that boundary. If the Board was to require plantings, where would those begin?

Chair Weathersby stated the property is the property. The Board cannot require them to do plantings on someone else's property.

Member Crapo pointed out that the removal of the gravel, loaming and seeding, is in the other parcel.

Member Dibble noted the wetlands boundary is determined by the wetlands on the ground.

Member Crapo explained the gravel box either is, or isn't, in property that is owned by the applicant. The removal of the gravel could, or could not, be occurring on his property.

Chair Weathersby noted that if this was approved, it could be conditioned upon them having permission from the property owner to do that work.

Attorney Phoenix stated they did not have the benefit of the letter from Mr. Spurl. He would have liked to have tried to address it. The letter is based upon information only from the Conservation Commission without some of Mr. Spurl's concerns being addressed before he wrote that opinion. He appreciates what

the Conservation Commission has done because there has been activity in the buffer. They have been pretty low key, even saying moving it to the other side. He continued that Mr. McCune has said where he has added some fill but that doesn't seem to satisfy the Conservation Commission. Mr. Spurl has said to dig it all down to where it was traditionally. This cannot be hung on the McCune's because they didn't do it. It would be almost impossible to tell where and when the fill was placed. There needs to be a balancing of what was outback before, its proximity to the wetlands and the effect it had on the wetlands for many years. That proximity was about the same as is being proposed now. As far as vehicles, he understands the concerns; however, a person can drive a vehicle on their lot. If there had never been a shed on the other side, he would understand better the Conservation's position. Since there was and that was in close proximity to the wetlands, it does not make sense to him. He pointed out that the Conservation Commission's letter does not say there is any harm to the wetlands. It says they are concerned about it being in the buffer but there is no conclusion there is harm to the wetland. He noted that Steve Riker, who is a wetland scientist, has stated that undoing what is out there could be more harmful. He asks that the Board to take this into consideration.

Member Dibble asked if there was a building permit obtained to disassemble the barn and move it to another location.

Attorney Phoenix commented he is not aware of one.

Chair Weathersby asked what the request for surface alteration pertains to.

Attorney Phoenix stated at the beginning of Parsons Road there was some gravel put in. That is within 75ft. It is a catch all for anything that might've happened because it is not known who put fill where and when.

Chair Weathersby asked if the applicant was open to doing native plantings in that area and along the back property line.

Attorney Phoenix stated there are two issues. One is the wetland is 30ft off the property line but the land in between is not the applicants. It has not yet been established. He does not know they have the right to put native plantings there until that is established. The area that is his property is his yard and that is getting pretty close to the house. It wouldn't make sense to have a yard, native plantings and then an area that the applicant can't touch once it is loamed and seeded.

Chair Weathersby asked if the Conservation Commission is requesting native plantings for the whole area or for just the boundary line.

Mr. Garvan replied the whole area behind the shed. There is also a grass strip and gravel for the old paddock area. The commission would like all of that planted with native plants. (He reviewed the area on the map for the Board.)

Chair Weathersby clarified that the triangle in question is the area that the commission would like to see planted with native plants.

Mr. Garvan confirmed. Also, the immediate buffer to the wetland because that is the one that has been the most damaged.

Attorney Phoenix stated the McCune's are willing to put the native plantings out there, as long as they have the right to do so. If someone says they can't, they don't want to have a condition that can't be fulfilled because a third party won't allow it.

Mrs. King stated that the Conservation Commission can help facilitate some of that conversation with DRED.

Chair Weathersby asked if the commission's wetland concerns would be addressed if plantings were done in that strip.

Mr. Garvan noted they are still concerned about the building and the driveway in the buffer. They would like to see it moved further away from the buffer.

Chair Weathersby closed the public hearing at 9:15 p.m.

Chair Weathersby reviewed the variances and special exception being requested.

Member Driscoll stated that if the applicant had pulled the proper permits for moving the shed, they would've known the setbacks and the wetlands. He takes the argument that they did not know there were wetlands out of play. The Conservation Commission's letter seems to be pretty reasonable. The one thing he disagrees with there is they relocated the shed once and they can do it again. When the shed was relocated before it was just a skeleton. It is now three times the weight of that and is tied together where it can't move at all. He knows it would not be as easy to move now as it had been the first time. He thinks the Conservation Commission was good about not trying to get into the fill that was there before. It seems that no one is addressing that anymore and that is a nice consideration to make. No one is saying that all that fill, wherever it is, has to be removed. He thinks that something needs to be done in here. It is within the wetland setback and there is a lot of action going on with what is there.

In regards to the previous fill, Member Crapo noted that if they start digging it may be that someone filled the entire lot 50 years ago. They would then be dealing with surface changes and possible contamination. He agrees that in some areas it may be nice to remove the gravel; however, it may disturb more and cause more damage in the process.

Member Dibble stated that trying to take out the gravel has a potential of becoming a hazard to the marsh. On the other hand, there is an area that is crushed stone. If that territory is going to be loamed, that is going to have to be removed to allow for enough loam to seed. The treatment of that area could be contingent upon the State determining where the property line is located. His biggest concern is the shed. He thinks the shed should be moved.

Member Crapo pointed out that anywhere the shed is relocated will require variances.

Vice-Chair Goldman stated he does not see the benefit in moving the shed.

Member Dibble commented it would be further from the wetland.

Alternate Hoyt pointed out the engineer has said the effect it has on the wetland is miniscule.

Member Dibble commented he would have to agree that it has a very small impact.

Member Driscoll stated he is looking at what the homeowner has presented and the fact that they are willing to compromise and remove the gravel area in the corner. The Conservation Commission has shown that they are being very reasonable as well. The commission has a little more knowledge of how much effect the shed has on the wetland. If the shed is there, does it increase the activity with the lobster traps, mowers and vehicles that are out there? As advertised, he is not for the application. There needs to be a little more knowledge with what the plan is to protect the wetlands from the activity of the property.

Vice-Chair Goldman stated he would leave the shed because there is not a good place to put it; any better than where it is. He thinks something ought to be done in the triangle. The gravel should be cleaned up. It is a separate issue as to who owns it and how it is done. He continued that some kind of remedial action should be provided based on the input from the Conservation Commission. Also, any kind of activity that would encroach on the wetlands should be ceased.

Chair Weathersby stated it is not so much about the shed. It is all the other activity and the shed contributes to that. There is clearly a lot of stuff going on with the parking of boats and trailers. Those are much more endangering to the wetland than the shed; however, the Board does not have the jurisdiction to do anything. She is troubled about the amount of gravel that was put down to get back there. She is troubled by the boats and trailers. She likes the idea of the native plantings.

Member Crapo commented the plantings curb the activity in that triangle area. He continued that he would like a continuance to get more clarity from the State. The applicant will not be doing the plantings before May or June.

Chair Weathersby noted it could be conditioned upon the applicant doing the plantings, unless the State refuses to allow them to do so.

Member Driscoll asked what the extent of the plantings would be.

Chair Weathersby commented it would be based on the recommendations by the Conservation Commission.

Member Driscoll stated if he was the homeowner he would not want to put that much money and faith into a plan that does not exist.

Chair Weathersby stated if the Board required the triangle to be a vegetative buffer, if it is found to be owned by the McCune's they would put in the native plantings. If it is owned by the State, they would get permission to put it in. The State may not allow it and the whole condition would go away. She suggested that the applicant consult with the Rye Conservation Commission in regards to a plan for revegetating the area and shall implement that.

Attorney Phoenix stated that if an approval with a condition is made that the gravel in the back area be removed and native plantings be put in, they will do it. Native plantings could be grasses or shrubs. There are all kinds of native plantings that could be put in there. If it is the States, they are going to want the gravel removed and the native plantings. He sees it as being a theoretical problem but not a practical problem.

There was discussion on a possible condition of the triangle being revegetated with native plants and whether a consultation with the Conservation Commission regarding this is necessary.

Chair Weathersby asked the Board if they would agree to a condition of “*shall in consultation with the Rye Conservation Commission will develop a plan to revegetate the triangle with native plantings and shall implement such plan*”.

- **Goldman – Yes, Crapo – No, Driscoll – Yes, Dibble – Yes, Weathersby – Yes (Hoyt – Yes - not voting on the application)**

Chair Weathersby called for a vote for a special exception to 301.7 C and 301.8.B (6):

1. Granting the special exception would be neither injurious nor detrimental to the neighborhood?
 - **Goldman – Yes, Crapo – No, Driscoll – Yes, Dibble – Yes, Weathersby – Yes**
2. Is it in harmony with the purpose and intent of the zoning ordinance and is in accordance with the specific rules contained therein?
 - **Goldman – Yes, Crapo – No, Driscoll – Yes, Dibble – Yes, Weathersby – Yes**

Is the use ordinarily prohibited in the district? - **Yes**

Is the use allowed by special exception? - **Yes**

Are the terms specified in the ordinance met in this particular case? - **Yes**

Chair Weathersby called for a vote on variance request to *Section 204.3A*:

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

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

2. The spirit of the ordinance is observed?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

3. Substantial justice is done?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

4. The values of surrounding properties are not diminished?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

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

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, 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?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

7. The proposed use is a reasonable one?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

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

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

Chair Weathersby called for a vote on variance request to *Section 301.8B (1), surface alteration for the gravel area near Parsons Road on the pond side:*

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

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - No

2. The spirit of the ordinance is observed?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - No

3. Substantial justice is done?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - No

4. The values of surrounding properties are not diminished?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - No

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

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, 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?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - No

7. The proposed use is a reasonable one?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - No

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

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - No

Chair Weathersby called for a vote on variance request to *Section 301.8B (1), removal of gravel in the area behind the shed and the paddock area; and remediate with native plantings:*

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

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

2. The spirit of the ordinance is observed?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

3. Substantial justice is done?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

4. The values of surrounding properties are not diminished?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

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

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, 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?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

7. The proposed use is a reasonable one?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

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

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

Chair Weathersby called for a vote on variance request to *Section 301.8B (1), surface alteration for other fill and gravel that may have been added to the property over the years (existing conditions)*:

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

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - No

2. The spirit of the ordinance is observed?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - No

3. Substantial justice is done?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - No

4. The values of surrounding properties are not diminished?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - No

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

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, 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?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - No

7. The proposed use is a reasonable one?

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - No

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

Goldman – Yes, Crapo – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - No

Motion by Paul Goldman to grant the request by John E. McCune, Jr., Revocable Trust, for property located at 243 Parsons Road, being Special Exception from Section 301.7C and 301.8B (6), for the shed 19.2ft from the wetlands conditioned upon the applicant, and/or his designate, consulting with the Rye Conservation Commission to develop a plan to revegetate the triangle with native plantings and implementing such plan, and also conditioned upon an as-built. Seconded by Burt Dibble. Vote: 3-2 Opposed: Shawn Crapo and Patricia Weathersby

**Motion by Paul Goldman to grant the request by John E. McCune, Jr., Revocable Trust, for property located at 243 Parsons Road, being Variances from 204.3A, for the shed 2.2ft from the rear yard setback, 301.8B(1), for surface alteration within the 75ft buffer for gravel added near Parsons Road on the north side, the other fill added within the wetlands buffer previously, and to permit the gravel to be removed and other activity necessary to remediate the triangle area; conditioned upon the applicant, and/or his designate, consulting with the Rye Conservation Commission to develop a plan to revegetate the triangle with native plantings and implementing such plan, and also conditioned upon an as-built. Seconded by Burt Dibble.
Vote: 4-1**

Motion by Paul Goldman to continue the applications of Stephen Brown, William and Donna Purdie, and Ryan and Jennifer Huskey. Seconded by Patrick Driscoll. All in favor.

Note: Patricia Weathersby recused herself from the following application. Paul Goldman was seated as Acting Chair and Alternate Charlie Hoyt was seated.

- 4. Russell Bookholz for property owned and located at 32 Porpoise Drive, Tax Map 20.2, Lot 41 requests Variances from Section 204.3 C for a shed 10' from the front property line where 21' is required and from Section 204.3B for same shed 1' from side property line where 20' is required. Property is in the General Residence, Coastal Overlay District. Case # 01- 2017.**

Russell Bookholz explained that he currently rents a storage unit. He has come to the conclusion that what he is paying for a storage unit per year, he could build a shed. He does not have a garage or a crawl space and storage is limited in the house. The proposal is to build on the same side as the state park so it will not encroach on the neighbors to the other side. The neighbor across the street has written a letter in support to the Board. That neighbor is the only one who will really be able to see it. He noted that the reason the shed is proposed 1ft from the side property line is to leave room to get to the septic. He pointed out it will be a 10x20 shed with a traditional gable roof. It will be a single story standard shed.

Member Driscoll stated that the issue with having it 1ft off the property is that someone would have to stand on their neighbor's property to paint. He does not see this as an issue in this case because it is State property.

Member Hoyt asked if the 75ft wetlands buffer was delineated from the town map.

Mr. Bookholz stated he based it on the town maps and from when he built the house across the street.

Acting Chair Goldman opened to the public for comments or questions. No comments were heard.

Member Crapo asked if there would be a driveway to the shed.

Mr. Bookholz replied no. He will only be putting down base gravel to set the shed on.

Acting Chair Goldman asked if there are any other modifications related to removing land or bringing in fill material.

Mr. Bookholz explained there will be a 4 inch base of gravel underneath the shed.

Member Dibble asked if it is a prefab shed.

Mr. Bookholz replied that he is not sure if it will be prefab or built.

Member Driscoll asked where the doors will be for the shed.

Mr. Bookholz commented the doors will be facing the street.

Acting Chair Goldman asked if the 1 ft setback is from the drip edge.

Mr. Bookholz confirmed.

Hearing no further questions, Acting Chair Goldman closed the public hearing at 10:40 p.m.

The Board did not have any issues with the proposal.

Acting Chair Goldman called for a vote on variances to *Sections 204.3C and 204.3B*:

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

Driscoll – Yes, Crapo – Yes, Hoyt – Yes, Dibble – Yes, Goldman - Yes

2. The spirit of the ordinance is observed?

Driscoll – Yes, Crapo – Yes, Hoyt – Yes, Dibble – Yes, Goldman - Yes

3. Substantial justice is done?

Driscoll – Yes, Crapo – Yes, Hoyt – Yes, Dibble – Yes, Goldman - Yes

4. The values of surrounding properties are not diminished?

Driscoll – Yes, Crapo – Yes, Hoyt – Yes, Dibble – Yes, Goldman - Yes

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

Driscoll – Yes, Crapo – Yes, Hoyt – Yes, Dibble – Yes, Goldman - Yes

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

Driscoll – Yes, Crapo – Yes, Hoyt – Yes, Dibble – Yes, Goldman - Yes

7. The proposed use is a reasonable one?

Driscoll – Yes, Crapo – Yes, Hoyt – Yes, Dibble – Yes, Goldman - Yes

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

Driscoll – Yes, Crapo – Yes, Hoyt – Yes, Dibble – Yes, Goldman - Yes

Motion by Burt Dibble to approve the variance setbacks, as advertised, for a single story shed with gable roof for 32 Porpoise Drive. Seconded by Shawn Crapo. All in favor.

- 5. Stephen C. Brown, Trustee, SKRJ Realty Trust for property owned and located at 0 Big Rock Road, Tax Map 8.1, Lot 45 & Tax Map 5.2, Lots 79, 80 to re-subdivide 11 small nonconforming lots on the old recorded Myrica By the Sea Plan to create two new non-conforming lots and therefore requests Variances from Section 204.3F for lot #1 to have 31,395sq. ft. of lot area and 38.86' of frontage where 44,000 sq. ft. of lot area and 150' of frontage is required; lot #2 to have 31,121 sq. ft. of lot area and 51.92' of frontage where 44,000 sq. ft. of lot area and 150' of frontage is required and from Section 202.13 for each lot for less than 30,000 sq. ft. of contiguous upland soil. **Property is in the General Residence and Coastal Overlay District. Case #02-2017.****

- Continued to the February meeting.

- 6. William & Donna Purdie for property owned and located at 1154 Ocean Blvd, Tax Map 19.4, Lot 90 request Variances from Section 202.5 to install a septic system 5' from**

northeast side setback where 20' is required; from Section 204.3B for a shed 2.6' from the northeast (left) side setback where 20' is required; from Section 204.3C for a shed 2.2' from the front setback where 30' is required; from Sections 301.8 B(7) for a shed 91.4' from tidal marsh where 100' is required. They request relief from the Building Code Section 7.9.2.5 for septic system 5' from northeast side setback where 20' is required and from Section 7.9.3.2 for septic system with a bottom bed 3' above the seasonal high water table where 4' is required. **Property is in the General Residence and Coastal Overlay District. Case #03-2017.**

- Continued to the February meeting.

7. **Ryan & Jessica Huskey for property located at 23 Locke Road, Tax Map 8, Lot 73 and owned by Arbor Realty Trust** request a Variance from Section 304.4 for a building height of 30.1' where 28' is allowed. **Property in the Business and Coastal Overlay District. Case #05-2017.**

- Continued to the February meeting.

Note: *Patricia Weathersby was reseated as chair.*

IV. OTHER BUSINESS

- None

Adjournment

Motion by Burt Dibble to adjourn at 10:47 p.m. Seconded by Paul Goldman. All in favor.

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

*Respectfully Submitted,
Dyana F. Ledger*

DURBIN LAW OFFICES, P.L.L.C

144 Washington Street
P.O. Box 1222
Portsmouth, NH 03802
603-287-4764
www.durbinlawoffices.com
durbinlawoffices@gmail.com

Derek R. Durbin, Esq.
derek@durbinlawoffices.com

December 28, 2016

BY: EMAIL & FIRST CLASS MAIL

Town of Rye
Zoning Board of Adjustment
10 Central Road
Rye, NH 03870

kreed@town.rye.nh.us
prowell@town.rye.nh.us

RE: ZBA Case: 56-2015
Zadeh – 245 Pioneer Road, Tax Map 24, Lot 118

Dear Members of the Board,

Please accept the following request to withdraw the above reference administrative appeal in advance of the Board's January 2017 meeting. The above reference appeal is being withdrawn based on Building Inspector Rowell's representation that he is withdrawing his Notice of Violation as a result of an agreement recently reached with the Conservation Commission regarding a proposed tidal buffer "restoration plan" for the Zadeh property.

I thank you for your continued consideration of this matter.

Sincerely,

Derek R. Durbin

Derek R. Durbin, Esq.

CC: Clients
Luke Hurley, Gove Environmental
Sally King, Conservation Commission

www.durbinlawoffices.com

Tim Phoenix

Subject: FW: 13 Ocean View Ave., Rye - Blodgett Case #64-2016

Tim

From: Tardif, Rob [mailto:Robert.Tardif@des.nh.gov]

Sent: Thursday, November 03, 2016 8:47 AM

To: 'Peter Rowell' <PRowell@town.rye.nh.us>; Tim Phoenix <TPhoenix@hpgrlaw.com>

Cc: Susan J <sjfaretra@comcast.net>; Blodgett, Chip <dblodgett17@gmail.com>; Baas, Jay <John.BaasIII@des.nh.gov>;

DeSeve, Richard <Richard.deSeve@des.nh.gov>; Thomas, Eric <Eric.Thomas@des.nh.gov>; Kim Reed

<kreed@town.rye.nh.us>; Buker, Dawn <Dawn.Buker@des.nh.gov>; Thomas, Eric <Eric.Thomas@des.nh.gov>

Subject: RE: 13 Ocean View Ave., Rye - Blodgett Case #64-2016

Peter and all –

After further consideration of this issue, it is the position of the Subsurface Systems Bureau that the 2 bedroom system approved under Approval for Construction No. eCA2016082604 is valid and may be constructed. In addition, notes on the approved plan indicate that a deeded EDA exists on the property for Lot 16 located "across the street to the north". Since this system for the property across the street is deeded on the subject property, the system may remain and so long as it is not currently in failure, may be continue to be used without the submission of a new application for Approval for Construction. The Bureau will require an amended plan depicting the location or approximate location of the EDA.

Please contact either Dawn Buker or me if you have any questions.

Rob Tardif

Robert A. Tardif, P.E.

Administrator

Subsurface Systems Bureau

603-271-2904

603-271-6683 fax

robert.tardif@des.nh.gov

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Roberta L. Lannie, David W. Blodgett, Jr. and Erin E. Blodgett

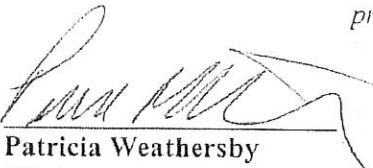
Property: 13 Ocean View, Tax Map 19.4, Lot 38
Property is in the General Residence, Coastal Overlay

Application case: Case # 64-2016

Date of decision: October 5, 2016

Decision: In a 4 to 1 vote, the Board continued to its November 2, 2016 meeting the applicants requests for Variances from Section 603.2 to demolish an existing non-conforming building and replace it with a new building; from Section 202.5 for a septic system in the rear boundary where 5.6' +/- exists, 5.6' is proposed and 20' is required; from Section 204.3A for rear setback where 19.5' exists, 19.3' is proposed and 30' is required; from Section 204.3B left side yard setback where 20' exists, 19.5' is proposed and 20' is required; and on the right side where 11.8' exists, 11.5's is proposed and 20' is required. Relief from the Building Code Section 7.9.2.5 for septic system rear setback where 5.6' +/- exists, 5.6' is proposed and 20' is required; from Section 7.9.3.1 for a distance of septic to bed bottom from bedrock where 4.3' +/- exists, 4.3' is proposed and 6' is required and from Section 7.9.3.2 for septic design criteria where 2' +/- exists, 2' is proposed and 4' above seasonal high water table is required.

Applicants' application was continued in order for the applicant to provide to the board (1) any relevant easement deeds concerning septic systems on the property; (2) septic design plans that account for the entire effluent disposal situation on the property; (3) assurance that NHDES has accounted for the entire effluent disposal situation on the property in its approval of the proposed septic system; and (4) plans depicting the proposed home as having two (2) bedrooms.



Patricia Weathersby
Chairman

Note: The Selectmen, any party to the action and any person directly affected have a right to appeal this decision; 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 that petition.

Faretra Septic Design, LLC
181 Gile Road
Nottingham, NH 03290

Office: 603.659.6556
Cell: 603.793.6530
sjfaretra@comcast.net

December 28, 2016

Attorney R. Timothy Phoenix
Hoefle, Phoenix, Gormley & Roberts, PA
Attorneys at Law
127 Parrott Avenue
PO Box 4480
Portsmouth, NH 03802-4480

Re: Roberta L. Lanni, David W. Blodgett, Jr.
and Erin E. Blodgett
13 Ocean View Avenue
Tax Map 19.4, Lot 38
Rye, NH

Attorney Phoenix,

In regards to the septic system design for #13, NHDES Subsurface Bureau requested the following information:

- Amending the septic design plan to depict the location or approximate location of the effluent disposal area for #16 Ocean View, the Jones Property, (email from Rob Tardiff, Subsurface Bureau Administrator, Nov. 3, 2016)
- Amend the septic design plan for #13 to show that a new system for #16 Ocean View could be installed on #13 property (phone with Eric Thomas, Subsurface Bureau Reviewer, Dec. 7, 2016)

In regards to the septic system design for #13, the Rye Board of Adjustment, through their Notice of Decision, Oct. 5, 2016, requested the following information in items 2 and 3:

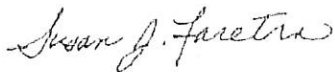
- (2) septic design plans that account for the entire effluent disposal situation on the property
- (3) assurance that NHDES has accounted for the entire disposal situation on the property in approval of the proposed septic system

In order to meet the concerns of both NHDES Subsurface Bureau and the Rye Zoning Board of Adjustment, I have done the following:

- Excavated and located the existing distribution box that receives the wastewater from #16 on the Blodgett property, #13
- Found no wastewater present surrounding the distribution box or signs of wastewater ponding in the distribution box area. Saw no sign of system failure (with witness by the Town of Rye representative, Dennis Plante), 12/9/16.

- Evaluated the soils for a replacement effluent disposal area for #16 by digging a test pit that was witnessed by the Town of Rye representative, Dennis Plante, 12/9/16.
- Consulted with Rye Water District to address the sewer crossing of Ocean View Ave. (Rye Water District input included on design Sheet 3 of 4 note)
- Designed a full future system replacement plan for a future approval for #16, Jones property, to be submitted as sheets 3 and 4 of the Blodgett design and prepared for submittal.

Sincerely,

A handwritten signature in cursive script, reading "Susan J. Faretra".

Susan J. Faretra
Faretra Septic Design, LLC
Designer #946

Kim Reed

From: Stephen Ellingwood <lingwoo914@aol.com>
Sent: Monday, October 3, 2016 10:18 AM
To: Kim Reed
Subject: Zoning Board meeting on Case 64-2016

To: Rye Planning and Zoning Board
Kimberly Reed

From Stephen and Catherine Ellingwood

Dear Kimberly,

As abutters to the location in question, I have no objection to the variances as proposed in the notification of September 19th of this year and support the project as a whole.

Sincerely,

Stephen and Catherine Ellingwood
10 Appledore Ave
Rye NH 03870

To: Rye ZBA

From: Tim and Christine Carberry

235 Parsons Road

Re: McCune request for variance at 243 Parsons Road

To Whom It May Concern:

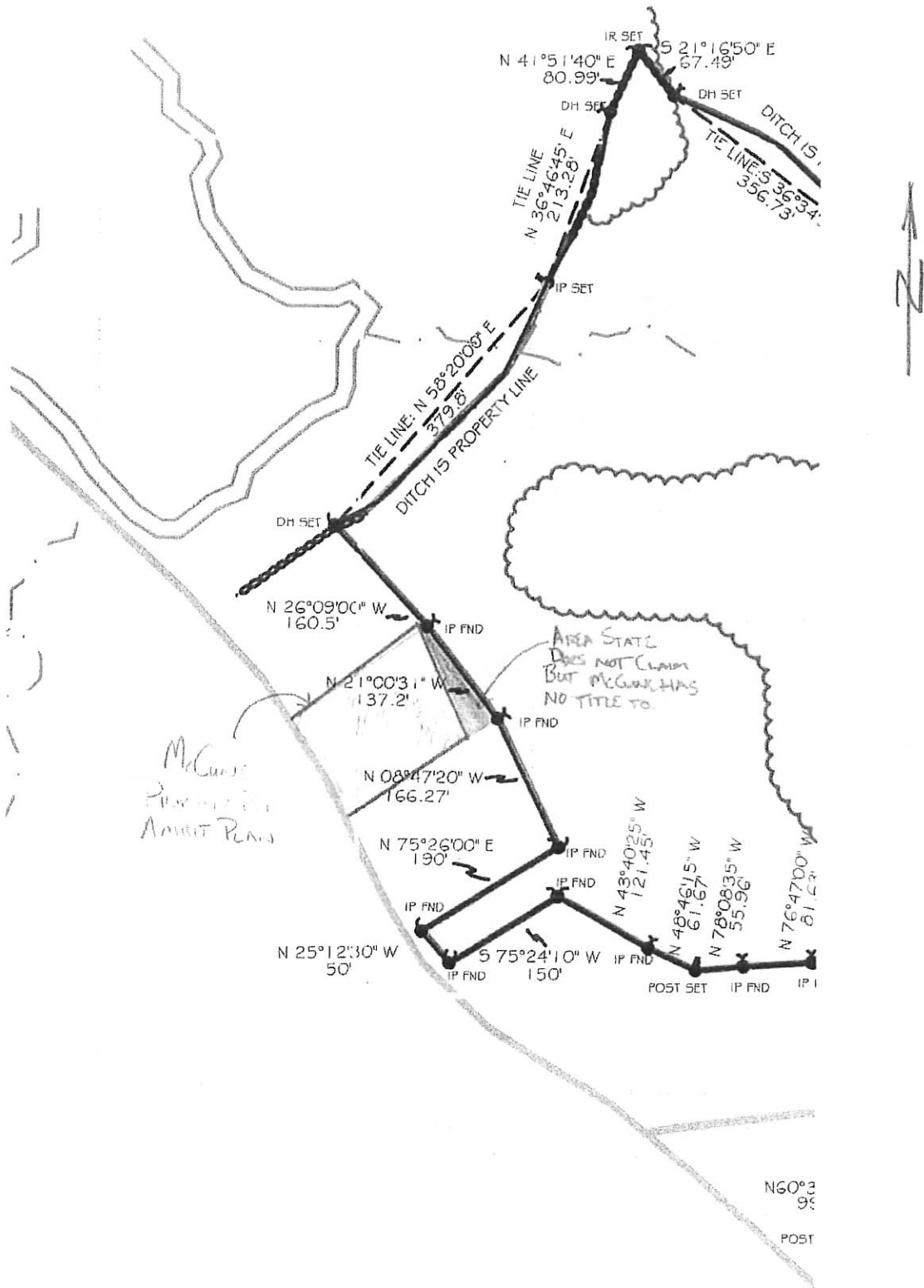
As we are the only abutters to 243 Parsons Road, we wanted to send a letter to express our feeling that we are in favor of you granting the McCune's the variance they have requested. As this directly affects us, we thought it would be good for you to have our thoughts on the matter.

In our view, the shed's current location seems to be a much more suitable location than where it used to be, when it was much closer to our property. In the current location, all of the lobster gear and items that used to be stored in the other corner of the property are now located out of our view. This seems to be a much more sensible location as they have always used that side of the lot for moving items into the yard etc. and now they can simply move the items down and keep them on that side of the shed out of everyone's view.

In general, the McCune's have done nothing but greatly improve their property since we have lived here for the past 23 years. We believe the intention of relocating the shed was for the benefit of us, and to improve the overall appearance of the yard. Please let us know if you have any questions or would like further input. Thank you.

Sincerely,

Tim and Christine Carberry



ferences:

e is made to the following plans on file with DRED

: Plan O.C.E-Fort Dearborn-1945

Point State Park Plan-1963

position-1982

own Subdivision-RSL Design-1988

NTS

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Alex & Joanne Zadeh

Property:

245 Pioneer Road, Rye, Tax Map 24, Lot 118
Property is in the Single Residence District

Application case:


Case # 56-2016

Date of decision:

January 4, 2017

Decision:

The Applicants' withdrew their request for an Administrative Appeal of the July 11, 2016 Building Inspector's Notice of Violation of the Rye Zoning Ordinance Section 301.8 (B) 5 and the August 1, 2016 Building Inspector's Notice of Violation II of Section 301.8 (B) 5.



Patricia Weathersby,
Chairman

Note: The Selectmen, any party to the action and any person directly affected have a right to appeal this decision; 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 that petition.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Stephen C. Brown, Trustee, SKRJ Realty Trust of
21 South Main Street, Rochester, NH

Property:

0 Big Rock Road, Tax Map 8.1, Lot 45 and Tax Map 5.2, Lots 70 & 80
Property is in the General Residence & Coastal Overlay Districts

Application case:

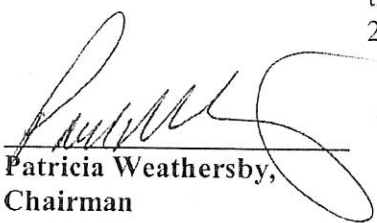
Case # 02-2017

Date of decision:

January 4, 2017

Decision:

The Applicants' request to re-subdivide 11 small nonconforming lots on the old recorded Myrica By the Sea Plan to create two new non-conforming lots and therefore requests Variances from Section 204.3F for lot #1 to have 31,395sq. ft. of lot area and 38.86' of frontage where 44,000 sq. ft. of lot area and 150' of frontage is required; lot #2 to have 31,121 sq. ft. of lot area and 51.92' of frontage where 44,000 sq. ft. of lot area and 150' of frontage is required and from Section 202.13 for each lot for less than 30,000 sq ft of contiguous upland soil was continued to February 1, 2017.



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:

Ryan & Jessica Huskey

Owner:

Arbor Road Trust of 16 Arbor Road, North Chelmsford, MA

Property:

23 Locke Road, Tax Map 8, Lot 73
Property is in the Business & Coastal Overlay District

Application case:

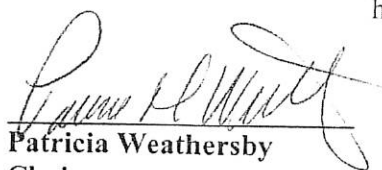
Case # 05-2017

Date of decision:

January 4, 2017

Decision:

The applicant's request for a Variance from Section 304.4 for a building height of 30.1' where 28' is allowed was continued to February 1, 2017.


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:

William & Donna Purdie

Property:

1154 Ocean Blvd, Tax Map 19.4, Lot 90
Property is in the General Residence & Coastal Overlay Districts

Application case:

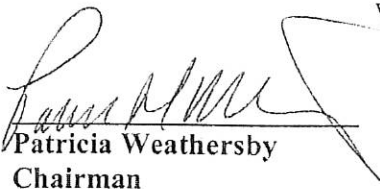
Case # 03-2017

Date of decision:

January 4, 2017

Decision:

The applicants' request for Variances from Section 202.5 to install a septic system 5' from northeast side setback where 20' is required; from Section 204.3B for a shed 2.6' from the northeast (left) side setback where 20' is required; from Section 204.3C for a shed 2.2' from the front setback where 30' is required; from Sections 301.8 B(7) for a shed 91.4' from tidal marsh where 100' is required and their request for relief from the Building Code Section 7.9.2.5 for septic system 5' from northeast side setback where 20' is required and from Section 7.9.3.2 for septic system with a bottom bed 3' above the seasonal high water table where 4' is required were continued to February 1, 2017.



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: John E. McCune, Jr. Revocable Trust, John E. McCune, Jr., Trustee

Property: 243 Parson Road, Tax Map 19, Lot 103
Property is in the General Residence, Coastal Overlay, SFHA Zone AE (9)

Application case: Case # 69-2016

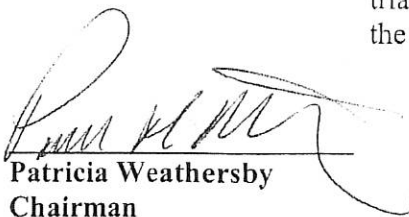
Date of decision: January 4, 2017

Decision: The applicant's request for a Special Exception pursuant to Sections 301.7C and 301.8B.6 for an accessory building 19.2' from the wetlands was granted by a 4 to 1 vote with the following conditions:

- (1) That the applicant and/or his designee collaborate with the Rye Conservation Commission to develop a plan for re-vegetation of the triangular strip of land of uncertain title immediately behind the lot line of the applicant and implement such plan within 12 months; and
- (2) an as-built plan be provided to the Town.

The applicant's request for a Variances from Section 301.8B. 1 for surface alteration within the 75' wetlands buffer for:

1. The gravel placed along Parsons Road to remain was granted by a 4 to 1 vote.
2. Other past surface alterations with the wetlands buffer (existing conditions) to remain was granted by a 4 to 1 vote.
3. The proposed removal of the crushed stone/gravel behind the existing shed and former paddock area was granted by a 4 to 1 vote with the following conditions:
 - (A) That the applicant and/or his designee collaborate with the Rye Conservation Commission to develop a plan for re-vegetation of the triangular strip of land of uncertain title immediately behind the lot line of the applicant and implement such plan within 12 months; and
 - (3) an as-built plan be provided to the Town.



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:

Russel Bookholz

Property:

32 Porpoise Drive, Tax Map 20.2, Lot 41

Property is in the General Residence, Coastal Overlay

Application case:

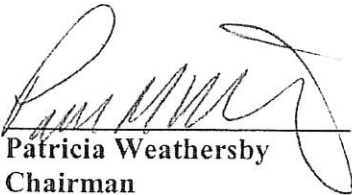
Case # 01-2017

Date of decision:

January 4, 2017

Decision:

The Board voted unanimously to grant the applicant's request for Variances from Section 204.3C and 204.3B for a shed 10' from the front boundary line and 1' from the right side boundary line.



Patricia Weathersby
Chairman

Note: The Selectmen, any party to the action and any person directly affected have a right to appeal this decision; 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 that petition.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Roberta L. Lannie, David W. Blodgett, Jr. and Erin E. Blodgett

Property: 13 Ocean View Ave., Tax Map 19.4, Lot 38
Property is in the General Residence, Coastal Overlay

Application case: Case # 64-2016

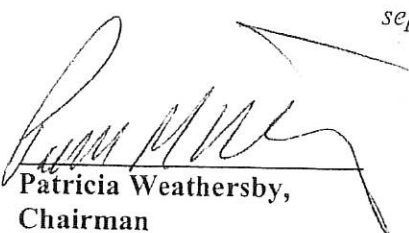
Date of decision: January 4, 2017

Decision: The Board voted unanimously to grant the applicants' request for Variances from Section 603.2 to demolish an existing non-conforming building and replace it with a new building; from Section 202.5 for a septic system 5.6' from the rear boundary; from Section 204.3A for structure 19.3' from rear of property line; from Section 204.3B for structure 19.5' from the left side boundary and 11.5' from right side boundary.

The Board voted unanimously to grant the applicants' relief from the Building Code Section 7.9.2.5 for a septic system, 5.6' from rear boundary; Section 7.9.3.1 for a distance of 4.3' septic to bed bottom from bedrock and Section 7.9.3.2 for septic design criteria 2' above seasonal high water table.

The applicants' approvals were each conditioned upon receipt of approvals from NH DES for the proposed sump pump drain and for the proposed septic system serving 13 Ocean View Ave., Tax Map 19.4, lot 38.

Nothing herein shall constitute approval of the proposed replacement septic system for 16 Oceanview Ave. also located on the subject property.



Patricia Weathersby,
Chairman

Note: The Selectmen, any party to the action and any person directly affected have a right to appeal this decision; 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 that petition.