

**TOWN OF RYE – BOARD OF ADJUSTMENT**

**Wednesday, May 3, 2017**

**7:00 p.m.**

**Rye Junior High**

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

*Others Present: Planning/Zoning Administrator Kimberly Reed*

**I. Call to order and Pledge of Allegiance**

Chair Weathersby called the meeting to order at 7:02 p.m. and led the Pledge of Allegiance.

**II. Approval of Minutes:**

**• March 1, 2017**

Motion by Patrick Driscoll to approve the minutes of March 1, 2017 as amended.

Seconded by Shawn Crapo. Vote: 3-0-2 Abstained: Gregg Mikolaities and Shawn Crapo.

**• April 5, 2017**

Motion by Shawn Crapo to table the approval of the April 5, 2017 minutes for further information in regards to the application for 740 Washington Road. Seconded by Tim Durkin. Vote: 4-0-1 Abstained: Gregg Mikolaities

**III. Applications:**

- 1. Re-hearing of application of Stephen C. Brown, Trustee, SKRJ Realty Trust of 21 South Main Street, Rochester NH for property owned and located at 0 Big Rock Road, Tax Map 8.1, Lot 45 & Tax Map 5.2, Lots 79, 80 limited purposed for proving reasons for its March 1, 2017 denial of 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/Coastal Overlay District. Case #02-2017.**

**Sitting for discussion: Patricia Weathersby, Patrick Driscoll, Tim Durkin, Gregg Mikolaities and Charles Hoyt.**

Chair Weathersby noted that Attorney Tim Phoenix has requested a continuance of this case. Attorney Phoenix is tied up at another municipal meeting with other clients and cannot be present until later. She explained that last month, the Board determined that the Notice of Decision was deficient. The rehearing request was granted for the limited purpose of clarifying the reasons for denying the variances requested by Mr. Brown, SKRJ Realty Trust. The rehearing is scheduled for tonight for that limited purpose. By nature of a rehearing, there is public and applicant testimony allowed but it would be limited strictly to the reasons for denial. The Board is not going to vote again on the variances. The Board will clarify the reasons and a new decision will be drafted with the supporting reasons. There would be an opportunity for very limited (in scope) testimony from anyone who wanted to speak in regards to the Board's reasons for denying the variances. She stated that she understands why Attorney Phoenix wants to be present. She offered to move the rehearing to after item 3 on the agenda, to not have to continue this to another month. She heard today that Attorney Phoenix was not sure if he could be there by then and would like to continue to the June meeting.

Chair Weathersby allowed a question from the audience.

**Randy Crapo, Big Rock Road**, stated that the Board's decisions and reasons were heard at the last meeting. Whether they were recorded or not, to the requester's satisfaction, is not the public's concern. How many times will the public have to come back to a meeting to comment on this property?

Chair Weathersby explained that this is the reason she offered initially to not continue the rehearing but to move it. She didn't want this to drag out. She didn't want to move this to the end of the night because she did not want people to be sitting through other lengthy applications waiting to see if this was heard. She understands the public's frustration; however, Attorney Phoenix wants to be here for his client.

**Shawn Crapo, sitting as a member of the public, 676 Central Road**, called for a point of order. He stated that the point when the Board made its decision, and their reasons for it, was after public testimony had closed and the Board was in deliberations. The reasons just did not make it to the Notice of Decision. There should not be a point of public testimony where the merits can be re-litigated. He does not see how anyone can tell the Board their reasons.

Chair Weathersby stopped Mr. Crapo. She stated that a rehearing by nature means that the issue gets addressed and there is public testimony allowed. She noted that she has made the decision to follow that path and allow public testimony on the limited scope of the Board's reasons for denial. She thinks the record is pretty clear, if not the first time, after last month. The Board is just going to get it on record and move on. She reiterated that she is going to allow, and thinks by law they have to allow, testimony if someone wants to speak on that very limited nature because it is a rehearing limited to that.

**Motion by Tim Durkin to deny the request for a continuance. Seconded by Patricia Weathersby for discussion purposes.**

Member Durkin stated that this was discussed at length at the last meeting by Attorney Phoenix and the public. The purpose of this rehearing was very narrow in scope. He thinks they can address this issue without delaying this another month.

Member Driscoll stated that the Board accepts requests for continuances on a normal basis. The applicant, or his representative, has the ability to represent themselves. Even though the Board believes it will be short in nature, there may be something applicable that would benefit the Board in making the right decision on this case. Based on the precedence that has been set, he would vote in favor of a continuance.

Chair Weathersby stated that it certainly would be accommodating to the applicant and give him nothing to complain about. She shares much of the thoughts of Member Durkin.

Chair Weathersby called for a vote on the motion to deny the request for continuance.

**Vote: 2-2-1 Abstained: Gregg Mikolaities**

**Motion failed due to a tie.**

**Motion by Patrick Driscoll to grant the continuance to the June meeting. Seconded by Charles Hoyt.**

**Vote: 3-2-0 Opposed: Tim Durkin and Patricia Weathersby**

**Deb Crapo, Big Rock Road**, stated that the applicant has had three continuances. She asked how they will know that they will not ask for another.

Chair Weathersby explained they have the right to ask again.

**Note: Charles Hoyt was unseated and Shawn Crapo was seated.**

- Application for 21 Brackett Road – Robinson & Kimberly Berry

**Motion by Patrick Driscoll to continue the application of Robinson and Kimberly Berry to the June meeting. Seconded by Shawn Crapo. All in favor.**

**Note: Patrick Driscoll was unseated and Charles Hoyt was seated.**

- Application for 11 Fairhill Drive – Carmen & Katherine Place

**Motion by Charles Hoyt to continue the application of Carmen and Katherine Place to the June meeting. Seconded by Shawn Crapo. All in favor.**

**2. Manuel & Carol Barba for property owned and located at 740 Washington Road, Tax Map 11, lot 103** requests an Administrative Appeal from the Building Inspector's 11-1-2016 Notice of Violation of Rye Zoning Ordinance Sections 203.1 A for a second dwelling on one lot and from Section 301.8B(1), 301.8B(2) & 301.8B(7) for a dwelling within the 75' wetlands buffer and from Rye Building Code Section 7.9 for the unit not having a pressurized water system connected to an individual sewerage disposal system. **Property is in the Single Residence District. Case #04-2017. Public hearing closed. Continued for Board approval of Notice of Decision.**

**3. Manuel & Carol Barba for property owned and located at 740 Washington Road, Tax Map 11, lot 103** requests variances from Section 203.1A for a second detached dwelling on the property; from Section 202.4 for a second dwelling on one lot where one per lot is allowed; from Section 203.3 E for dwelling that is 300 sq. ft. where 960 sq. ft is required; from Section 203.3B for building within the 20' side property line where 20' is required; from Section 301.8B (1) for a driveway within the 75' of the wetlands buffer and from Section 301.8B (2) & 301.8B (7) for second dwelling and septic tank 21.3' from the wetlands where 75' is required; and Building Code Relief from Section 7.9 for effluent of second unit not be connected to an individual sewerage disposal system. **Property is in the Single Residence District. Case #06-2017.**

Chair Weathersby stated that last month the applicants asked for an appeal from the Building Inspector's November 1, 2016 Notice of Violation of the Zoning Ordinance and the Rye Building Code, which the Board voted on but did not finalize the Notice of Decision. This will be the first order of business. The applicants also requested variances from Section 203.1A, for the second detached dwelling on the property, Section 202.4, for the second dwelling on one lot where one lot is allowed, Section 203.3E, for the dwelling that is 300sf, where 960sf is required, and Sections 301.8B (1), 301.8B (2) and (7).

Speaking to Attorney Kieser, Chairman Weathersby asked if these are still the variances being requested or if there was another for the septic system.

**Attorney Monica Kieser, representing the applicant,** commented that they are not sure where the 300sf measurement came from. That is not on the application that was submitted. She continued that what was recently submitted addresses the replacement of the current septic system with a system that is within the 75ft buffer. There is still a request for allowing a phase-in for the installation of the system.

Chair Weathersby stated that the Board will deal with the Notice of Decision first and then address the variances. She continued that the members have in their packets a draft Notice of Decision. The Board voted 4 to 1 to deny the applicants' Administrative Appeal, finding no error to the Building Inspector's November 1, 2016 Notice of Violation. "Finding no error of such violation for the following reasons". She pointed out that she listed what she thought were the reasons; however, the Board needs to be very clear about the reasons. She asked the members to review the Notice of Decision and offer any comments or improvements to the draft so it can become final.

Member Crapo stated that what is in the draft is sufficient and summarizes the findings that the Board came to as a result of the vote.

Chair Weathersby stated that it also gives them a little "wobble" room in that the Board was not 100% sure about the grandfathering and the municipal estoppel. She hesitates a little and perhaps they should continue until that is "nailed" down. This does say that it was a majority of the Board, which it would have had to have been in order to deny the appeal. Her recollection was that it was a majority of the Board for both the grandfather issue and the second dwelling. However, if the Board would like to wait to finalize this until next month that could be done as well.

Member Driscoll stated that he read through all the cases. He did not sit for this application at the last meeting. Because the Notice of Decision discusses the Board that was present last month, he is not sure if he should recuse himself from voting on this.

Chair Weathersby stated that she would probably not have him vote on approving the Notice of Decision. She noted that four of the members were present so there is enough to have a vote.

Member Crapo stated that if it is thought that when the tape and the minutes are reviewed, there is more delineation that clarifies, then it should be continued.

Member Durkin agreed.

Chair Weathersby stated that it is important to make sure who voted for what and when.



**Motion by Shawn Crapo to continue approval of the Notice of Decision to the June meeting.**

**Seconded by Tim Durkin. Vote: 4-0-1 Abstained: Gregg Mikolaities**

**(Members who voted: Shawn Crapo, Tim Durkin, Charles Hoyt, Patricia Weathersby)**

**Members Seated for Application: Patricia Weathersby, Shawn Crapo, Tim Durkin, Charles Hoyt and Gregg Mikolaities**

Speaking to Member Mikolaities, Chair Weathersby asked if he had a chance to review the minutes of the last meeting concerning this case, since he did not sit for the application last month.

Member Mikolaities confirmed.

Attorney Kieser stated that she understands the Board's decision with respect to the grandfathering. She continued that most of the structure that sits on that lot was there since the 30's and 40's. She thinks there is evidence to support that. She knows there has been some debate about its use and whether it was expanded subsequently. When the subdivision was approved in 1986, there was discussion that the cottage was not on the plan that was recorded at that time but it was on the other worksheets. She noted that she has copies of the plans that have the cottage. The plans show that the cottage clearly was there. (She submitted the copies for the Board's review.) The recorded plan incorporates by reference all the other plans. The cottage is not on the recorded plan but these are the plans that are referenced in the recorded plans. She noted that in one of the drawings the cottage is not on the plan but there is a well. There wouldn't normally be a well where water was not needed. The other plan shows the structure with "cabin" written inside the rectangle. (She also submitted a set of photos showing what the cabin looked like in early years.) She noted that the last picture is a photo that she took this past September. It can be seen that it is largely the same structure. It has different color siding but it has the same fieldstone foundation. There is a couple of extra feet added to it on the back with a full foundation under. There is also a picture showing that the cottage roofline is different now than it was before. She continued that the cottage is different than what it was when Mr. Green passed away; however, it is not hugely different. Mr. Barba did not make the changes to the cottage. The tax card indicates that this was recorded on the tax card as a 1.5 story nanny quarters, (cottage). All of these notations were on tax cards before Mr. Barba ever purchased the property, which was in 2006.

She stated that in looking at the minutes of 1986 concerning the development, one of the things that can be found is a presentation by Mr. Longstreet, the person seeking to make the Hunter's Run Development, where the Board heard about the project. People asked why the property could not be made a little smaller. There were concerns about where the dividing line was going to be between the farm and the rest of the development. Mr. Longstreet said that he wanted to leave it the way it was so the cabin and the wetlands would be the natural buffer between this property and the development. This was further indication that this structure (property) was like this before anyone built their house in Hunter's Run.

Attorney Kieser continued there was some discussion the last time that when the road went in for the development water was run to this cottage and running for about 3 to 4 years before it was turned off. The affidavit from Paul Chisholm indicates that the cottage was put back on the well at that point. The Board also heard about a series of complaints that were made. The primary issue was that in 2003, Susan Zarlengo, of the Rye Building Department, responding to a complaint from Mr. Doyle who is one of the abutters. Ms. Zarlengo stated in that response that it can continue indefinitely. It is a prior non-

conforming use. She continued that the MacLeods before they marketed the property obtained an opinion letter from their lawyer in 2005. A year later in 2006, Mr. Barba bought the property. Once again, this goes to the heart of substantial justice prong of the variance request.

Attorney Kieser continued that there is a building/site sketch as part of the packet. She thinks they can redraw the request to have this structure within the 20ft side setback because it turns out that it is not based on the site sketch. It is over 20ft from the boundary line but is within the wetland buffer. She continued that she is not certain of the total square footage of the cottage. She may have represented at the last meeting that it was 300sf because that is what one of the tax cards listed. The previous tax cards have listed it as a 1.5 story cabin. She thinks the impression of Mr. Rowell is that it is not more than 960sf, which is why he had a concern. With respect to the cottage within the wetland buffer, it has been there and they are not seeking to put a new structure within the wetland buffer. The structure is not being expanded. The structure is already there and it was there when Mr. Barba purchased the property.

She stated that one thing the abutters seem to be most concerned about historically has been the septic, which is an appropriate concern. What's there is not acceptable but it is being pumped on a regular schedule. What is proposed is a septic system with a sealed tank and pipe inside the wetland buffer but not a leachfield. The leachfield would be outside the wetland buffer. If the septic is approved, it cannot run without the water being turned back on. The septic needs to be on town water in order for it to work as designed.

Chair Weathersby asked if she agrees that the building is less than 960sf.

Attorney Kieser replied yes but she does not know the exact dimensions.

Member Crapo asked how the dimensions would not be known at this point, with all the effort put into this. He commented there are a lot of unknowns.

Member Hoyt commented that it is a 10x16 structure.

Attorney Kieser replied this is about right. It is a 1.5 story structure. There is a dormer that was not part of the original structure.

Member Hoyt commented it is probably around 310 or 320sf.

Chair Weathersby asked if building code relief for the affluent system not being connected is still being sought, or is a variance being requested for a septic system.

Attorney Kieser explained that she is asking for both. She is asking for a variance for the installation of the septic system. Mr. Barba is asking for this to be done within 9 months. Mr. Barba has spent a fair amount of money to put this issue to rest in some fashion. The septic system, as designed, is about \$15,000 and that is not something that he can install this summer.

Chair Weathersby clarified that building code relief is being requested to allow the existing system to continue for just 9 months. The variance is being requested for the new system to be constructed in 9 months.

Attorney Kieser confirmed.

Member Durkin asked what would happen if after whatever period the Board agrees to, Mr. Barba comes back and says he does not have the financial resources to do it now he would like another 6 months. In the meantime, it continues to be an occupied dwelling with an inadequate system.

Attorney Kieser stated that the Board can set those parameters.

Chair Weathersby explained that if this was granted, the approval could be granted upon a State approved septic system being installed and operating within a certain amount of time. If it is not, the variances fail and they cannot have a second dwelling. The applicant is always allowed to come back and ask for more time.

Member Crapo asked if they are allowed to condition the building code relief. All of this is based on a tenant being in the building. The building could remain empty until the septic is put in under the variances. The only reason the building code relief is needed is so a tenant can continue to live there in the interim.

Chair Weathersby stated that if the Board granted this, the building code relief could be conditioned to terminate on a certain date and at that point no one could live there anymore. They would have to come back for an extension and it would be reviewed by the Board.

Attorney Kieser reviewed the points for granting the variances.

**Corey Colwell, MSC Engineering**, stated that in the Board's packets is a septic design that was submitted to the Town of Rye for preliminary approval. The Building Inspector has approved that and it has since gone on to final approval. The leachfield is 75ft from the wetlands. The only component within 75ft is the tank and the outlet pipe. The system is a two bedroom design for a one bedroom cottage. He continued the exact dimension of the cottage is known, 21x14. He does not know the exact square footage because he has not been inside to get the exact measurements. He is comfortable that it is under 960sf. He noted that the well and cesspool on the property would be abandoned. Town water would be hooked up as shown. Town water is currently on the other side of the dwelling. This would have to be rerun to maintain the 10ft separation between the outlet pipe and town water. All utilities would be brought in to conformance. The septic system is oversized. It will have a longer life expectancy by its oversizing. It will be in decent soils and is expected to function well where it is sited.

Member Driscoll asked if there is anything that addresses the stormwater management.

Mr. Colwell replied there are no improvements contemplated on the plans for stormwater management.

Member Mikolaities asked why they are not just asking for a two lot subdivision if it is 4.2 acres.

Mr. Colwell replied that they have not looked at this. Mr. Barba has indicated that he wants to keep the two structures on one lot for rental purposes.

Member Mikolaities stated this is his concern. The lot supports the minimum zoning for two lots. This may have already been looked at and someone decided that two lots could not be put there.

Mr. Colwell stated that his concern is that there may be more wetland than upland on the back. With the 75ft wetland setback and the 40ft front setback, there is no place on the back of the lot for the second structure under the current zoning standards. As soon as the lot is subdivided and a new lot is created, it is starting over.

Chair Weathersby commented that she had the same thought. A more modern house could be built if there was room for a second house, which may also help the Barbas out financially.

Referring to the site sketch, Mr. Colwell stated with the 75ft setback from the wetlands and the 40ft front setback overlap, there is virtually no buildable area on the back of the lot that complies with current zoning regulations. Once subdivided, a structure could not be placed anywhere that complies with current zoning regulations. The current structure is grandfathered, in his opinion.

Speaking to Mr. Colwell, Chair Weathersby asked him to review the wetlands boundaries on the plan.

Mr. Colwell reviewed the wetland areas and boundaries on the plan before the Board.

Chair Weathersby asked the distance of the nearest part of the cabin to the wetlands.

Mr. Colwell replied 21ft. That is the bulk head, on the back of the cabin, to the wetlands to the south.

Chair Weathersby clarified that the only thing that is in the wetlands buffer is the tank. She asked for the distance of the setback to the tank.

Mr. Colwell replied 50ft. He pointed out that this does meet NH DES guidelines. Rye requires a 75ft setback to any part of the septic system.

Attorney Kieser stated that Mr. Barba has expressed no interest in subdividing the property. He enjoys having a large property. He has animals on the property. Mr. Barba wants to maintain the farm as it is. This is strictly about retaining the rental income. He does not have designs on further development of the property. (She continued to review the criteria for granting the variance requests.) She continued that any variance obtained would ultimately involve a process, whereby, the Building Inspector would inspect the property and grant it a certificate of occupancy. People have asked about electric and things of that nature. Those things would also be addressed in that process.

Chair Weathersby asked if the cabin has a bathroom and a kitchen.

**Manuel Barba, applicant**, stated that on the inside there is a small kitchen off the backside. There is also a bathroom off the other side of the living room. There is a spiral stairway to the second floor. The second floor has the same footprint as the first floor, except for the kitchen and bathroom. The walls only go up 4ft and then there is the roofline on the second floor. It is not all walkable. On the back side, it is straight up.

Member Durkin asked what heating system is used.

Mr. Barba replied it is forced hot air. There is a furnace in the basement.

Member Crapo asked if the spiral staircase is up to code for egress for sleeping on the second floor.

Mr. Barba replied that he has seen spiral staircases in other homes. He does not know what the codes are.

Speaking to Mr. Barba, Attorney Kieser asked if the staircase was there when the property was purchased.

Mr. Barba replied yes. He noted that the only thing that has been changed is the carpet. There have been some repairs. At one point, the pipes froze and some had to be replaced. The skylight in the kitchen also had to be replaced at one time.

Member Mikolaities stated that he is looking at the Building Inspector's letter from 2016. He found no building permits from 1953 on for this property. He asked when Mr. Barba purchased the property.

Attorney Kieser replied that he purchased the property in 2006. She continued that the information she has is from the Historical Society. Dr. Alex Herlihy has a book compiled on the history of Rye. Her information is based on his knowledge, as well as other people.

Member Mikolaities stated that he wants to understand the gap between 1953 and today. He would like to understand the position on when the applicant thinks the grandfathering started and when the changes were made.

Attorney Kieser replied that she does not believe the changes were made after 2003. Dr. Herlihy said that in the 1960's, after Harry died, the toolshed morphed into tiny house. It is assumed that after Harry died, whoever owned the property made some changes to make it a more modern livable space. Mr. Barba came into this property as it was. It was a dwelling when he bought it.

Member Mikolaities stated that there is no debate that the structure was there in the 20's, 30's and 40's. The pictures show modern construction without building permits. He is concerned as to how this happened. Someone could have a shed in their backyard with no plumbing and all of a sudden it could turn into a rental unit.

Mr. Barba stated that it must have happened when Mr. Green passed away in the 1960's. In the mid 70's, people lived in that house. He is not sure at what stage the house was at during that time.

Attorney Kieser stated that with prior inquiries of the town, people have occasionally asked these same questions. The owners at the time submitted information to show continued use of the property. Lucy Chisholm provided information to Attorney Charles Griffin that he summarized in a letter to the Town in 1991, saying this has been used continuously until 1989 and the Chisholms purchased the property in 1991. There were inquiries of the MacLeods and they called Attorney Griffin again and he submits the same letter. It was said that this is an approved dwelling and its use can continue indefinitely. She appreciates that people are concerned about what this place looks like on the inside and whether it is safe for people. She can certainly appreciate that abutters are concerned about effluent; however, that was on the Town to address in 1991 or 2003. At that time, it was addressed to the Town's satisfaction. The Town certainly had the opportunity to bring enforcement action in 1991. They had the opportunity to bring the enforcement action in 2003 and put those owners, who were probably in a much better position factually and financially, to combat an enforcement action at that time. She asked why Mr. Barba should



be in a position to try to recreate history back to 1960, once someone says in 2003 that this is an approved use and continue indefinitely.

Referring to the furnace, Chair Weathersby stated that the Fire Department is in charge of inspecting the system. She asked if the Fire Department had any records on file.

Attorney Kieser replied that she did not check the Fire Department.

Chair Weathersby asked when the furnace was installed.

Attorney Kieser replied that she does not have any information about when anything was installed.

Mr. Barba stated that when he purchased the property he had a house inspection to make sure everything was working properly.

Chair Weathersby opened to the public.

**Albert Kelley, 34 Hunter's Run**, stated that he purchased his land in 1992 and built a home in 1993. When Mr. Longstreet had this property, the original development that he proposed to the Town was 9 lots. Where this little house sits, was the 9<sup>th</sup> lot. It was said at the meeting by one of the board members that the house was too close to the wetlands. Mr. Longstreet quickly said that he would leave it as one lot to get approval for the development. The board said they would accept that. This is the reason there is 4.2 acres and not 9 acres. Mr. Longstreet did this because he wanted to develop the land and was getting push back from one of the board members. He continued that there is no subdivision allowed of this property because the deed clearly states that it can never be subdivided. This was the language that was proposed by Mr. Longstreet to sell everyone on the development. Additionally, the picture has been painted that this is a nice little cabin with a well. The reality is this is a shack. The property was originally a farm and that structure was an outbuilding. It wasn't a dwelling. It wasn't a cabin. In looking at any old picture, there is no chimney. Without a chimney, there wouldn't be anybody dwelling in that property. When Mr. Longstreet took that property over, his son changed the structure. The developer's son, without permission from the Town, made the structure his own personal dwelling. He does not think that something that is illegal, just because it has not been caught for 10 days or 10 years, should all of a sudden be legal. He stated that the 75ft is critical when talking about a tank near the wetlands. The wetlands go across the street into the pond of the Saunders property and across his backyard. That is where all the waste has been going. None of the people in the subdivision knew that there was no septic system there. It is his understanding that all owners of the 8 properties are against this and have written or are present to speak against it. He stated that this is a single residence. It is approved as a single residence. The applicant can prove no hardship by not having this as a rental. The fact that he has financial difficulty does not supersede the law that says the hardship has to be proved in order to have this in place. Mr. Barba has full use of his property. There is no hardship there. He pointed out that in the old pictures it was never occupied. It was only occupied when Mr. Longstreet got the approval from the Town and his son made a dwelling out of it for a few years. The next owners rented it out. Not too many neighbors on the street had a problem with it at the time because they thought the Town had approved it. He noted that the character of the residence does not allow the Town to give this variance. The applicant has broken every rule and continues to defy the Town. He thinks it is unjust to the neighborhood.



Attorney Kieser stated that she would be happy to provide a copy of the deed. There is no restriction in the deed. The restriction is on the plan that is recorded in the registry. It says "this property shall not be subdivided".

Speaking to Mr. Kelley, Member Durkin asked if he was living in his home at the time the changes to the structure were made.

Mr. Kelley explained the changes were made after the approval the Town gave for the subdivision. Mr. Longstreet was the developer and his son changed the shack into a little place to live. That is why there is a different roofline and a different entryway.

Member Durkin asked if the prior owners, the MacLeods, rented out that structure.

Mr. Kelley confirmed.

Chair Weathersby stated that it does not appear to be in the deed. The deed references the subdivision plan. The subdivision plan does say that lot 8 "shall never be subdivided and all future use of this lot shall be subject to existing Land Use Regulations of the Town of Rye, N.H.". The date of the plan was May 26, 1986 and it was recorded late 1986.

Member Crapo asked why this did not come up when the question about subdivision was asked, since it was known that there was a restriction on the lot about subdividing.

Attorney Kieser replied that her clients are not interested in subdividing this property at all. They are seeking to codify a use that has existed for some time.

**Joe Cummings, 990 Washington Road,** asked how long the town water was used for the cabin.

Attorney Kieser read from the affidavit of Paul Chisholm. She continued that they believe it was 1986/1987, when the homes were constructed, until 1991.

Chair Weathersby noted that letters in opposition were received from:

- **Tony and Sally Manfredi, 22 Hunter's Run – 1/23/17**
- **Dan and Sue Parr, 16 Hunter's Run – 5/02/17**
- **Tim and Holly Cook, 33 Hunter's Run – 5/02/17**
- **Dennis Doyle – 4/18/17**

**Arthur Ditto, 6 Fern Ave.,** asked if the Board has the authority to grant the authority to continue the use of the system as it currently exists. In the Town Ordinances there is an Aquifer Protection District. (He read from the Town Ordinances.) He continued that he went through NH DES and town regulations and he could not find any indication that cesspools are grandfathered. He does not think the Board has the authority to grant a waiver for continued use of the cesspool. He has been told that this facility cannot be used until a compliant septic system is put in place. His suggestion is that the Board should speak with Attorney Donovan to see if they have the authority.

Chair Weathersby stated that she is told that the property is not in the Aquifer Protection District.

Mr. Ditto pointed out that the Aquifer Protection District goes up into the center of Town and covers this particular area.

Chair Weathersby stated she was not aware that the property may be in the Aquifer Protection District; however, the Board will seek out that information if they need to.

Mr. Kelley stated that he has never seen a truck at the property for pumping. He would challenge the applicant to show proof of payment for the pumping.

**Tim Cook, 33 Hunter's Run**, stated that he is opposed to the variance. He has lived in the neighborhood since 2008 and has not seen anyone pumping anything.

Attorney Kieser stated that she has a copy of an invoice for pumping, from May 2016, from Greg's Septic Service. The company went out to inspect the system and to pump the tank. She believes that the Building Inspector was present for that inspection.

Mr. Colwell stated that it is on the plan and he concurs that the property is in the Aquifer and Wellhead Protection District. This is noted in note 1 of the plan.

Member Crapo questioned what is existing for a system.

Attorney Kieser explained that the Building Inspector came out and inspected what was there. He wrote a memo to Mr. Barba. He said that during the inspection they exposed a tank that was located about 80ft from the building. (She read the memo from the Building Inspector.)

Speaking to Mr. Colwell, Chair Weathersby asked his opinion of the memo.

Mr. Colwell explained that it is a tank on the sides but not on the bottom. Based on Mr. Rowell's observations it is a bottomless tank.

Chair Weathersby clarified that it goes into the ground.

Mr. Colwell confirmed. It is contained on the sides but not on the bottom.

Member Crapo stated there is relief requested for a second dwelling on a lot. It pertains to limiting expansion. He asked if the applicant is willing to submit to a condition that this building not be further expanded. Part of his fear is that in order to meet code and get an occupancy permit, this building needs to be expanded or torn down. He feels they are being asked to give relief from a section that prohibits everything that is needed in order to effectuate what the relief is doing.

Chair Weathersby commented the condition can be put on and the applicant can accept it or not.

Chair Weathersby closed the public hearing at 9:15 p.m. She summarized the variances being requested:

- 202.4 – Second dwelling on the lot;
- 203.3(E) – Building being less than 960sf of ground floor;
- 301.8 (B)(1) & 301.8 (B)(7) – Dwelling in the wetlands buffer;
- 301.8 (B)(1), (2) and (7) – For septic tank being 50ft from the wetlands and buffer; and
- 301.8 (B)(7) – For the driveway.

Chair Weathersby pointed out that it seems that a variance is needed from Section 306.5, which has not been requested and will not be considered at this meeting. She noted that 306.5 is for the Aquifer and Wellhead Protection District. If this is approved, it could be conditioned upon them coming back for approval for Aquifer Protection relief. She continued that they are asking for Building Code relief to allow the cesspool to continue.

Chair Weathersby reopened the public hearing to note that they have received comments from the Conservation Commission. They conducted a site walk and had a meeting concerning this application. The Board has received their recommendations. (She read from the Conservation Commission's letter, dated March 30, 2017.)

Member Crapo stated that it does not even qualify as a dwelling. It is a glorified shed at best. He does not see how it can come up to code, as it exists, to be used for the requested relief. The requested relief is not needed because it cannot remotely be used as a dwelling. It definitely would not qualify under the accessory dwelling. Right now, there is no telling how many people will live there or not. It is a glorified farm shed that was used to house tools and somehow started being used illegally. He cannot support it.

Member Driscoll asked Member Crapo if the reason he thinks it is far from being a useable home is the egress from the second floor and the square footage.

Member Crapo commented it is the egress from the second floor and the square footage on the first floor. If life and safety codes are applied to this, he does not think it will make it under the current zoning.

Member Durkin stated that this issue can be addressed by the Building Inspector. That is not really for the Board to consider. The bigger issue is the relief that is being requested within the wetlands buffer. The history shows that the Town was very inconsistent in determining whether or not this was in fact a permitted dwelling. He empathizes with the owner in that regard. With that said, to have a functioning septic system, there are some significant issues about the fact that this is within the wetlands buffer. This is a real big concern.

Member Hoyt stated that in his mind it does not meet the definition of a dwelling. The Building Inspector does need to go in and determine how it is deficient; however, it is missing the mark on so many of those issues. He has a problem with it being a dwelling.

Chair Weathersby commented that she does too. The Town has set a minimum standard of 960sf for a standard dwelling. As a backup for smaller apartments, there is another standard. This still falls woefully short; that being the accessory apartment standards, which requires a minimum of 600sf, a full bathroom (not just a shower), has limits on how many people can live there and have approval from the Fire Department. It has certain life safety and living conditions that are met to have habitable living conditions. This falls short. She understands how it morphed into a cabin. She is very sympathetic to the situation the Barbas find themselves in. She does not think this "cabin" qualifies as a legal dwelling. It falls woefully short from the Town's standards. She continued that she has serious concerns about the wetland buffer. The entire dwelling is within the buffer and 21 ft from the wetland itself. The existing septic situation is horrible and unsanitary. She feels very badly about the situation that the Barbas are in; however, it is not a good idea to have a house of this size and in that location. It effects surrounding property values. The public health is negatively affected. She cannot support it.

Member Crapo commented the driveway, tank and house are all in the wetlands.

Member Hoyt stated that he appreciates the fact that they are trying to make some of the most blatant issues that are wrong with this property right. He is having a hard time getting on board with this because of the size of the dwelling and the opposition from the neighbors. He wanted to see this succeed. He liked the idea of a septic design that worked. In looking at the building itself, it is a shed turned into an apartment. It falls short on so many levels; egress, structure, size, electrical, thermal insulation, just to bring it up to code. This is what he is having a difficult time with.

Member Driscoll stated the one area he is having a hard time with is how this is different from a beach cottage or historic cottage that has a tiny stairwell going up to non-conforming bedrooms, in a house that was built in the late 1600's or 1700's, that everyone is looking to protect. He comes back to maybe it's because it was never intended to be a dwelling unit and there is grey area to this property. As much as this is undersized, he thinks the Town has protected itself very well from preventing someone to build something like this from scratch. He agrees this should not happen. However, this has been here for so long and they haven't changed it all that much. When he looks at the size of this, it is tiny. He looks at the way it is laid out on the inside. His major point is the septic and the access to the unit.

Chair Weathersby stated that the Board cannot do anything about building code. They have to look at variance factors and if having a second dwelling on the property makes sense.

Zoning Administrator Kimberly Reed called for a point of order. She noted that Patricia, Shawn, Tim and Gregg are sitting for the application. She has heard from Patrick but not Gregg.

Member Mikolaities stated that he has nothing to add. He agrees with Member Durkin's and Chair Weathersby's points. The "No further subdivision" is sticking with him. It sounds like the Town made some mistakes over the years; however, not having any building permits in the files does not make it right. He sympathizes with the applicant but he does not know why they would keep compounding the problem. It sounds like this started in 1986.

Chair Weathersby clarified that Member Driscoll is not voting. He is certainly allowed to chime in.

Chair Weathersby called for a vote to Section 203.3 E:

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

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

**2. The spirit of the ordinance is observed?**

Gregg Mikolaities -No  
Tim Durkin - No  
Shawn Crapo - No

Charles Hoyt – No  
Patricia Weathersby – No

**3. Substantial justice is done?**

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

**4. The values of surrounding properties are not diminished?**

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

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

Gregg Mikolaities -No  
Tim Durkin - No  
Shawn Crapo - No  
Charles Hoyt – No  
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?**

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

**7. The proposed use is a reasonable one?**

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

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

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

Chair Weathersby called for a vote to Section 202.4:

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

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

**2. The spirit of the ordinance is observed?**

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

**3. Substantial justice is done?**

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

**4. The values of surrounding properties are not diminished?**

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

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

Gregg Mikolaities -No  
Tim Durkin - No



Shawn Crapo - No  
Charles Hoyt – No  
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?**

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

**7. The proposed use is a reasonable one?**

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

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

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

Chair Weathersby called for a vote on Section 301.8(B)(1) & (7); dwelling;

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

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

**2. The spirit of the ordinance is observed?**

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

**3. Substantial justice is done?**

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

**4. The values of surrounding properties are not diminished?**

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

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

Gregg Mikolaities -No  
Tim Durkin - No  
Shawn Crapo - No  
Charles Hoyt – No  
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?**

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

**7. The proposed use is a reasonable one?**

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

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

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

Chair Weathersby called for a vote to Section 301.8(B)(1)(2) & (7); septic tank:

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

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

**2. The spirit of the ordinance is observed?**

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

**3. Substantial justice is done?**

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

**4. The values of surrounding properties are not diminished?**

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

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

Gregg Mikolaities -No  
Tim Durkin - No  
Shawn Crapo - 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?**

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

**7. The proposed use is a reasonable one?**

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

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

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

Chair Weathersby called for a vote to Section 301.8(B)(1) & (7); driveway:

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

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

**2. The spirit of the ordinance is observed?**

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

**3. Substantial justice is done?**

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

**4. The values of surrounding properties are not diminished?**

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

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

Gregg Mikolaities -No  
Tim Durkin - No  
Shawn Crapo - No  
Charles Hoyt – No  
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?**

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

**7. The proposed use is a reasonable one?**

Gregg Mikolaities -No  
Tim Durkin - No  
Shawn Crapo - No

Charles Hoyt – No  
Patricia Weathersby – No

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

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

Chair Weathersby called for a vote to Building Code relief; 7.9:

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

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

**Motion by Shawn Crapo to deny the request for variance and building code relief, per Sections subject to the vote. Seconded by Tim Durkin. All in favor.**

*(Members who voted: Patricia Weathersby, Shawn Crapo, Tim Durkin, Charles Hoyt and Gregg Mikolaities)*

**Motion by Shawn Crapo to continue the applications of Sylvia Cheever, Charles and Lindsay Benynon, and Stephen and Adele Carter to the June meeting. Seconded by Tim Durkin. All in favor.**

*(Members who voted: Patricia Weathersby, Shawn Crapo, Tim Durkin, Charles Hoyt and Gregg Mikolaities)*

**Note: Tim Durkin recused himself for the following application. Charles Hoyt was seated for Member Durkin.**

***Members seated for the following application: Patricia Weathersby, Shawn Crapo, Patrick Driscoll, Charles Hoyt and Gregg Mikolaities.***

- 4. Harbor Street Limited Partnership of 7B Emery Lane, Stratham, NH for property owned at 421 South Road, Tax Map 4, Lot 31 requests a Special Exception for property located at Tax Map 4, Lot 25 form Section 301.7(B) to construct a driveway with the following: (1) a 17' x 16' wetlands crossing 51ft from a vernal pool where a 100 ft setback is required. (2) 2,900 s.f. within the vernal pool buffer where a 100 ft buffer is required; (3) 3,510 s.f. within the wetlands buffer where a 75ft buffer is required. Property is in the Single Residence District. Case #13-2017.**



- 5. Harbor Street Limited Partnership of 7B Emery Lane, Stratham, NH for property owned at 421 South Road, Tax Map 4, Lot 31** requests a Variance from Section 301 for property located at Tax Map 4, Lot 25 to permit a driveway within the following: 1) a 17' x 16' wetlands crossing 51ft from a vernal pool where a 100 ft setback is required; (2) 2,900 s.f. within the vernal pool buffer where a 100 ft buffer is required; (3) 3,510 s.f. within the wetlands buffer where a 75ft buffer is required. **Property is in the Single Residence District. Case #14-2017.**

**Attorney Peter Loughlin, representing the applicant**, spoke to the Board. He stated that they are requesting a special exception from 301.7B and the alternative is a variance from 301. He continued that the parcel they are dealing with is tax map 4, lot 27. It is a 59 acre piece. It has frontage on South Road. The exception is being requested for lot 2. In the southwest corner of the property is about 80,000sf of uplands. It is land that is in the heart of the subdivision. It is not an isolated piece. He noted that they are seeking approvals to provide access to the wetlands that are in the southwest corner of the property. In order to get to the land in the southwest corner, it is necessary to construct a driveway in the location of an existing logging road at a point where the road crosses a small section of previously disturbed wetland soils. The area of wetland soils is 151sf. (He pointed this area out on the map before the Board.) He stated that in March the Planning Board's legal counsel made it clear that the request for lot 2 had to come before the ZBA before going back to the Planning Board. He noted that he misstated the numbers on the relief being sought. It looks like twice as much relief is being requested then what is actually needed. The core of the request is to construct a 12ft paved driveway, with 2ft wide gravel shoulders, for lot 2, which would be approximately 190 to 200ft long. It would intercept the 100ft buffer and the 75ft wetlands buffer at the point where there is presently a logging road that crosses. The logging road was placed at the narrowest point and this driveway would be placed at the narrowest point. There is 231sf of soils that was disturbed by the logging operations. Those soils would be restored as part of this proposal. The wetlands would be crossed with a 16x17ft concrete span on footings so there would be no filling of wetlands. He continued that in the application he asked for 2900sf of impact to the vernal pool buffer and 3510sf wetland buffer. It was indicated that the buffer impact was cumulative. It is not. The two buffers overlap so that all but 610sf of the wetland buffer impact is already included in the vernal pool buffer. The total buffer impact, the vernal pool buffer and wetland buffer is 3510sf. In the application, he asked for the 16x17 wetlands crossing. Since no wetlands are being filled, it was not clear to him whether they needed approval to cross wetland soil. Under the ordinance, the requirement for special exception for wetland soils versus wetlands buffer is the same. He pointed out that relief has been requested for both. The request is for a wetlands crossing, as well as the wetland and vernal pool buffer. As indicated, 151sf of wetlands will be crossed. Rye has had a wetland restriction since 1977. At some point, Rye added a buffer requirement from poorly drained and very poorly drained soils. Rye, like many towns, has allowed roadways to cross through wetland soils and wetland buffers by special exception. The standard to get to developable land, by means of a driveway or roadway, is considered to have more flexibility than constructing a building in the buffer or the wetlands. He feels they meet the conditions for granting a special exception.

Attorney Loughlin reviewed the conditions for granting the special exception:

- 1. Granting the special exception would not be injurious or detrimental to the neighborhood.**  
The area is zoned single family. It has always been zoned single family. A single family home can be constructed on this lot. The home would meet all the dimensional requirements of the zoning ordinance. It would be approximately 400ft from the nearest existing home. All of the issues concerning septic, field, tank and surface water have been addressed. It would not be injurious or detrimental to the neighborhood.

**2. Due to the existing conditions, no alternative route to buildable area on lot is feasible.**

There is no way to get to the 80,000sf of uplands without crossing some type of wetlands. The only reasonable access is the driveway that is being proposed. The driveway could be moved a little north, to get out of the vernal pool buffer, but the wetlands soil crossing would be wider at that point. The place where the driveway is being proposed is already disturbed.

**3. The driveway crossing is a center to the productive use of the land.**

The amount of uplands that exist in the southwest corner has always been, and continues to be, more than sufficient to accommodate a single family home. The property owners have a right to productive use of this land. Productive use of this land, means the right to have a single family home on it.

**4. Construction of the driveway will have minimal impact on the wetlands.**

There are no wetlands being filled. Degraded wetlands are being upgraded and the crossing is limited to the narrowest point. This is not a pristine area. It has been heavily logged several years ago and some of those impacts can still be seen. The area has been thoroughly examined and studied by the Town's and Harbor Street's consultants. That information is available to the Board.

**5. Economic advantage alone is not the basis for the special exception request.**

The area, which is the subject of this application, is not an add-on. It is a critical part of the proposed subdivision. It is the first large area of undeveloped land in that area; however, the only way to get to it is by going across the wetlands. On both sides of this land, there are lots. There is one that will face South Road and is of similar size. All the lots will meet the requirements of the zoning ordinance. This is not an area where there would be access to other uplands. There is some economic benefit to this, as there is some economic benefit to any application that goes before the Board. The zoning ordinance says that "economic advantage alone is not the basis for special exception". This is not trying to cut corners or gain the system. It is to try to get a driveway to develop a 3 acre building lot.

**6. The granting of the special exception is in harmony with the general intent and purpose of the zoning ordinance.**

The purpose of the vernal pools and wetlands setback requirements is to provide protection to the wetlands and vernal pools. They are not to provide protection to the buffers. The buffer protects the resource, which is the vernal pool or the wetlands. A very minor disturbance in the buffer will not negatively impact the wetlands or the vernal pool, thus is in harmony with the general intent and purpose of the zoning ordinance.

Attorney Loughlin stated that in his April 14<sup>th</sup> letter he submitted about a half dozen photos. The photos show that this is high and dry land. In looking at the crossing, there is only one photo that shows where the disturbed soil is located. It is high and dry land and the request is to put a driveway through that to gain access to the uplands beyond. He continued that at the March meeting the Town amended the purpose of the ordinance. There are a number of requirements that were restated. There is no conclusion that this is going to contribute to the pollution of surface or ground water by sewage or runoff. This is a large wetlands and buffer. This will be a 3% impact into the buffer and a small percentage of the 132ft into the wetlands. He noted that the Planning Board has asked that any invasive species be identified and routed out. The buffer between the edge of the 100ft buffer from the edge of the vernal pool will be subject to a no cut/ no disturbance restriction, which does not exist now. The Town's consultant suggested that there be restrictions on cutting and the developer has agreed to that. The driveway meets all the requirements for a special exception.

**Jim Gove, Gove Environmental Services**, stated that he did the wetlands delineation on the property. He continued that South Road is a high point. Everything slopes downhill to the north. The two vernal pools do not incorporate the whole wetlands. The key is that the area is upslope from this crossing. Once the area builds up to a certain extent it goes through the area and works its way into the wetlands where it can expand out. The reason why there is not going to be any detrimental impact to the vernal pools is because this is downslope. The issue is that this is a driveway not a road. It has very limited use just for a single family. He stated that vernal pool creatures like to lay their eggs in the pool and leave to the upland areas. They move back to the vernal pools in the spring. They will have the ability to move in any direction that they want to. (He pointed out the logging road on the plan for the Board.) He continued that in essence this area is already cleared out from having trees in it. It will be a very easy restoration. The sediment will be taken out and restored back to its original grade and function, which is essentially a discharge point. He noted that where this is located will have the least detrimental impact on the wetland because it is downslope, is in a limited area and is in an area that has already had the trees removed from it. The road is going to be at grade, except for the span over the wetland area.

Member Mikolaities asked if there is anything being done with the grading to make the buffer enhancement better. In looking at the plan from Beals Associates, the grading is going down towards the vernal pool.

**Christian Smith, Beal Associates**, reviewed the grading on the plan for the Board. He stated that the bulk of it does slope away. There is a small portion that will sheet flow off in that direction. There is protection with regard to marking the buffer and making it a no disturb zone and with the wetland crossing itself.

Member Mikolaities asked about the driveway material. He also asked about the detail of the crossing. What is the elevation at the crossing? Does it have to be a certain elevation for creatures? It looks all flat.

Mr. Smith replied that this is a very flat area.

Regarding the critter crossing, Mr. Gove stated that the fact of the matter is that animals, salamanders, amphibians and wood frogs, do not like to go through things. The animals will go out of their way not to go through a critter crossing. There happens to be a point where it is dark and they do not like to go through the dark area or a funnel. The creatures know that predators hang out in dark spots. The creatures would prefer to go over and stay out of the critter crossing.

Member Crapo asked how high it is for water to get through.

Mr. Smith explained that the thru way is going to be 2 to 3ft above the existing ground.

Chair Weathersby asked for a description of the span.

Mr. Smith explained that it would probably be brought in with a crane because it is a big piece of concrete. The footings will be set outside the wetland area on either side. It is brought in as a pre-cast arch. It is about 16ft in width and 17ft in length, which will give it enough length so the abutments set on the footing outside the restoration area. At the highest point, the arch will be 2 to 3ft above the grade.

Mr. Gove explained the amount of fill being taken out is minimal. It starts at 1ft to 1.5ft and goes down to about 6 inches on the other side. He further explained that as part of the review by the Town's wetland scientist, he made the suggestion and it was agreed, that some of the fill that was put there by the logging operation be taken out. The fill needs to be removed and brought back to grade so it continues to function.

Chair Weathersby asked if fill needs to be added to support the span.

Mr. Gove replied no.

Member Driscoll asked how far down the footings go.

Mr. Gove replied that typically they are 3ft down.

Referring to the plan, Member Crapo asked why the proposed house location for lot 3 could not shift to the south, towards lot 2, and a driveway go around the northern edge of the wetlands to the land.

Mr. Gove commented that he suggested the same thing. However, the associated buffers need to be looked at.

Member Crapo stated that it still looks like the house on lot 3 could be moved so that the driveway could go right along the lot line of lots 3 and 4. It would cut around the wetlands and go to the back land.

Mr. Smith explained that as the driveway peels around the edge of the wetlands, there is still an overlapping of the 75ft wetland setbacks on lot 3. It would be even more of a buffer impact.

Chair Weathersby clarified that there would be a buffer impact but not a direct wetlands impact.

Mr. Smith confirmed.

Mr. Gove commented that the proposal does not have a direct impact to the wetlands because it is being spanned. NH DES says that a direct impact is either a dredge or a fill. If the wetland area is spanned, a permit is not needed. Based upon state law, there is no impact.

Member Crapo commented that it was stated earlier that this area needs restoration and the current restoration is blocking some of the flow. If the area is restored, would the flow from the vernal pool area be increased and potentially grow the wetland right underneath the span?

Mr. Gove stated that the wetlands have not been newly created. This narrowing is a relatively recent phenomenon. The concept of bringing it back to its original grade is not going to make it any bigger because essentially its size was already set in the last 15,000 years. What is being done now is bringing it back from work that was done 5 years ago.

Chair Weathersby asked if they are saying that when the soils are removed in the wetlands they do not anticipate any change to the wetlands from what is depicted on the plans.

Mr. Gove replied no not at all. He explained that they are removing fill down to the original organic soils. The wetlands and the boundaries were established well before the logging that took place.

Chair Weathersby stated that she is having trouble understanding this if they are saying they are making the path towards the north more accessible. She asked why more water would not flow out.

Mr. Gove explained that it takes a long time for a wetland boundary to change. Even though the hydrology that is there is modified, it will take a long time before any changes are seen.

Member Crapo asked if the logging roads are only 5 years old.

Mr. Gove stated that there were several logging operations that took place over the years. The last logging operation brought in gravel on top of the road also.

Member Crapo commented that if the flows are increased from restoration, it means more water flowing from South Road to the vernal pool area and more to the northern part.

Chair Weathersby asked which road would have less wetlands impact; corduroy road or the proposed driveway.

Mr. Gove explained that if Mr. Falzone wanted to use the corduroy road to access the land, that would actually be considered an after-the-fact dredge and fill application that would need to be filed with the State of New Hampshire. The State would probably have the same issue saying there is an access that could be spanned which would not need a permit.

Chair Weathersby asked if the driveway will be paved.

Mr. Smith replied yes.

Chair Weathersby asked if the paved driveway is going over the arch.

Mr. Smith replied yes.

Chair Weathersby asked what kind of maintenance is needed for the arch.

Mr. Smith explained that the life span of the arch is 50 years plus. The beauty is that this is not a roadway so it does not get salted. The concrete spans have a great deal of integrity.

Member Crapo asked the weight limit of the span.

Mr. Smith commented that he cannot say because he has not seen structural drawings.

Mr. Falzone stated that the span can support anything that goes over a roadway.

Mr. Gove explained that the hydrology in this area is actually driven by the seasonal high water table. This is not receiving a lot of sheet flow. It is actually coming up from the subsurface area. It comes up and it is called vernal. It will actually drop again in the summer time. The vernal pools go nearly dry in the summer. The water table is fluctuating going up and down. This is the discharge point for a relatively brief period of time. By nature, the vernal pool is very seasonal. It fluctuates by 3ft. This is not like a gush of water that comes out. It is a seepage that comes through.



Member Mikolaities asked if there are any underground utilities or trenching that is going to cause anymore underground disturbance.

Mr. Falzone explained that it will go through the bridge.

Member Mikolaities commented that he does not have a problem with the crossing; however, it is leading to a bigger disturbance, which is the house and grading. He asked what will be done to protect the vernal pool when the house is built.

Mr. Gove commented the developer is prepared to put a protective buffer around it. The buffer would actually be labeled in the field. There is already a lot of tree growth all the way around. Essentially, it will all be labeled as a wetland buffer.

Mr. Falzone noted there will be a deed restriction.

Attorney Loughlin stated that he has a new plan that shows the "No Disturb" buffer. There is a note at the top that describes the restrictions. In the vernal pool buffer, there will be a no disturb restriction and that will go into the deed. He continued that there has also been a lot of discussion about the hydrology in the vernal pool not increasing or decreasing by more than 1 inch.

Chair Weathersby asked for the proposed amount of uplands on the proposed lot.

Attorney Loughlin replied that the lot area is 3.77 acres. The wetland area is 0.92 acres and impervious house and drive is 0.29 acres. The wetland area is 24%. The impervious house and drive is 6.6%.

Chair Weathersby asked the Board if they would like to continue to at least hear public comment and then see where they are at after that, as it is 11:05 p.m.

The Board agreed to hear public comment and decide how to proceed.

Chair Weathersby opened to the public for comments.

**Robert Seiner, 399 South Road**, asked if the public will be able to speak at the next meeting or if this will be the only time regarding this issue.

Chair Weathersby explained that the public has a chance to speak and the applicant has a chance to rebut. Either both of those things can happen or she will not close the public hearing at this meeting.

**Anne Hodsdon, 427 South Road**, stated that the public will not have a chance to speak again. This process has been going on for a long time and the public should be heard.

Chair Weathersby explained that once the applicant rebuts, the public will not have a chance to speak again. The applicant will only be able to address what they have heard from the public. It does not keep going back and forth.

**Stefanie Patrick-Chalfont, 410 South Road**, stated that this is way too important to get cut off. She would rather come back another month to be heard.



Attorney Loughlin stated that they are not asking for 30 days. They will respond to public comment at this meeting and the public hearing can then be closed.

Chair Weathersby suggested that they break now and have public comment at the next meeting.

**Motion by Shawn Crapo to continue the application to the June 7<sup>th</sup> meeting. Seconded by Patricia Weathersby. All in favor.**

6. **Sylvia Cheever of 264 Atlantic Ave, N. Hampton for Currents Restaurant LLC owned by Rosewood Realty Trust, located at 150 Lafayette Road Tax Map 10, Lot 14** requests an Administrative Appeal from the Building Inspector's letter dated March 22, 2017 per Section 701.1 of the Rye Zoning Ordinance to allow for additional seating for the restaurant. **Property is in the Commercial District. Case # 15-2017.**

- **Continued to the June Meeting. (See motion above)**

7. **Robinson & Kimberly Berry of 52 Spring Street, East Greenwich, RI for property owned and located at 21 Brackett Road, Tax Map 22, Lot 70** request a Variance from Section 301.8 B (1) & (7) to allow for a porch 95' from the wetland where 100' is required. **Property is in the Single Residence District, Flood Zone AE (9). Case #16-2017.**

- **Continued to the June Meeting. (See motion above)**

8. **Carmen & Katherine Place for property owned and located at 11 Fairhill Ave., Tax Map 20.2, Lot 96** request Variances from 603.1 for expansion of part of the existing non-conforming structure; from Section 204.3 C for an addition 22' from the front boundary of Fairhill Ave and a garage 21.6' from the front boundary of Eagle Rock Road where 30' is required; from Section 204.3 B for an addition 16.6' from the side property line where 20' is required; and from Section 304.5 for dwelling coverage where 11.7% exists, 17.1% is proposed and 15% is allowed; from Section 301.8B (2) for a septic tank 65' and a leachfield 62.3' from wetlands where 75' is required; and from Section 202.5 for a leachfield setback of 14.4' of rear property line where 20' is required. Applicant requests relief from the Building Code Section 7.9.2.2 for a septic tank that is 65' and a leachfield that is 71.4' from wetlands where 75' is required. **Property is in the General Residence, Coastal Overlay District. Case #17-2017.**

- **Continued to the June Meeting. (See motion above)**

9. **Charles & Lindsay Beynon of 362 Main Street, Unit 2, Charleston MA for property owned and located at 30 LaMer Drive, Tax Map 13, Lot 44** request Variances from Section 603.2 to tear down an existing building and replace with new; and from Section 301.8B (1) and 301.8B (7) for a driveway 56' from tidal marsh where 100' is required; and for a building 63.8' from the tidal marsh where 100' is required; from Section 203.3B for a building 15.2' from the side property line where 20' is required; and from Section 203.3C for a building 35.2' from the front property line where 40' is required. **Property is in the single Residence District. Case #18-2017.**

- **Continued to the June Meeting. (See motion above)**

- 10. Stephen & Adela Carter for property owned and located at 620 Wallis Road, Tax Map 16, Lot 104** request Variances from Section 203.3A for a shed 10' from the rear property line where 30' is required and from Section 203.3B for shed 10' from the side property line where 20' is required. **Property is in the Single Residence District. Case #19-2017.**

- **Continued to the June Meeting. *(See motion above)***

**Adjournment**

**Motion by Shawn Crapo to adjourn at 11:15 p.m. Seconded by Patricia Weathersby. All in favor.**

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

Respectfully Submitted,  
Dyana F. Ledger

740 Washington

**Kim Reed**

---

**From:** Kim Reed  
**Sent:** Wednesday, May 3, 2017 8:21 AM  
**To:** 'Patricia Weathersby'; 'Gregg M. Mikolaities'; 'Charlie Hoyt'; 'Shawn Crapo'; Tim Durkin; 'Patrick Driscoll'  
**Cc:** 'Monica Kieser'; 'Tim Phoenix'; J. Corey Colwell (ccolwell@mscengineers.com)  
**Subject:** FW: input for May 3rd meeting

Message from abutter below.

-----Original Message-----

From: Sue Parr [mailto:sueparr21@icloud.com]  
Sent: Tuesday, May 2, 2017 4:46 PM  
To: Kim Reed <kreed@town.rye.nh.us>  
Subject: input for May 3rd meeting

As residents of Hunter's Run in Rye we oppose any variance for new or additional septic construction near the little house across the road on Hunter's Run, on land belonging to Barba family.

We feel the present restrictions should be kept as is.

This is a residential neighborhood, the Barba's enjoy full use of their land, and there is no hardship to justify any variance.

Thank you, Dan & Sue Parr, 16 Hunter's Run Rye

Dennis M Doyle, Esq., CPA  
27 Hunters Run  
Rye NH 03870

April 18, 2017

The Board of Adjustment of the Town of Rye  
Rye Town Hall  
10 Central Road  
Rye, NH 03870

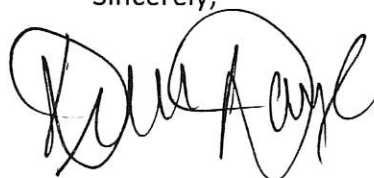
Re: Case Numbers 04-2017 and 06-2017; Administrative Appeal and requests for Variances by  
Manual and Carol Barba

Dear Board Members;

I am an abutter and writing in opposition to the request by Manual and Carol Barba for Administrative Appeal from Section 203.1A for a second detached dwelling on the property and variances from Section 301.8 B (1) (2) & (7) for a second dwelling within 75' of the wetlands buffer; and Building Code Relief from Section 7.9 for effluent of the second unit not to be connected to an individual sewage disposal system.

In opposition, no hardship exists as to the property that would justify granting any of the relief requested. The Property owners have full use and enjoyment of their property as a single family dwelling in the Single Residence District subject to the current zoning and building code. The building that is the subject of the variance request is currently being rented and is illegal in the Single Residence District. It does not have a functioning sewage disposal system and is in violation of wetland regulations. Not having an approved septic system is a major health hazard for the neighborhood and the town of Rye and a violation of State of New Hampshire law. The Rye Building Department has issued a notice to vacate the building which the property owners have ignored. Having rental property in the Single Residence District diminishes surrounding property values. Also, these renters have no regard for the character or appearance of the neighborhood. They have encircled the building with an unsightly chicken wire fence. The Single Residence District is a regulation that was established to prevent situations that diminish surrounding values.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis M. Doyle", written in a cursive style.

cc: Peter Rowell, Code Enforcement Officer

740 Washington

Tim & Holly Cook  
33 Hunters Run  
Rye, NH 03870

May 2, 2017

The Board of Adjustment of the Town of Rye  
Rye Town Hall  
10 Central Road  
Rye, NH 03870

Re: Request for Variances by Manual and Carol Barba . Case # 04-2-17 and 06-2017

Dear Board Members,

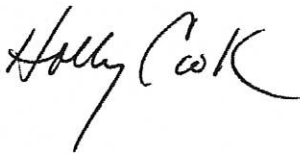
It just came to our attention yesterday regarding the hearing of the requests for variances by the Barbas. We are writing in opposition to the request for variances. We live two houses away and downhill from the second dwelling in question on the Barba's property. Our property abuts the Doyle's.

The property owner's current single family dwelling is located in the Single Residence District. According to the Rye Zoning rules, Accessory Dwelling Units are NOT permitted in a detached accessory building within the Single Residence District. The building that is the subject of the variance request is currently being rented, which is illegal. The Rye Building Department has issued a notice to vacate the building which the property owners have ignored. The building does not have a functioning sewage disposal system and is in violation of wetland regulations. I am additionally concerned with the care and livestock husbandry for the animals housed on this property. But more specifically, my understanding that the disposal of dead animal carcasses (goat, sheep, alpaca) in the area behind the subject building are not being performed to the NH Department of Environmental Services recommended practices. These practices outline burying dead animals to avoid attraction and disturbance by other animals such as coyotes in our residential neighborhood. Drainage runoff flows downhill and over our property. These issues are a health hazard to the neighborhood and are in violation of Town of Rye and State of NH Law. In keeping with the intent of the Single Residence District regulation to prevent situations that reduce property values, the building currently has an unsightly chicken wire fence surrounding it and a fallen stockade fence among other issues. The rental property diminishes the surrounding property values and downgrades the character and appearance of our neighborhood.

Sincerely,



Tim and Holly Cook



c.c. Peter Rowell, Code Enforcement Officer







and painting of him by Rolf Liium



Harry Green, center, entertaining Ed Herlihy et al  
with his cider at woods camp off Washington Rd.













## Town of Rye BUILDING DEPARTMENT

Peter E. Rowell CFM  
Building Inspector

10 Central Road  
Rye NH 03870

603 964-9800  
prowell@town.rye.nh.us

May 3, 2017

**MEMO:** Town of Rye - -Zoning Board of Adjustment

I will be unable to attend tonight's meeting, but wanted to give you my reason for denying occupancy on Case # 15-2017, Currents Restaurant located at 150 Lafayette Rd Map 10, Lot 14

I denied occupancy based on the attached approval for construction issued by the DES on September 10, 1984 granting approval for a 42 seat restaurant and stating that "loading remains as approved". Further, I was informed by the owner, Patricia Larson that she wishes the restaurant not to exceed 42 seats.

Sincerely,

Peter Rowell  
Building Inspector

**APPROVAL FOR CONSTRUCTION**

N.H. DEPARTMENT OF ENVIRONMENTAL SERVICES  
 114915 SUBSURFACE SYSTEMS BUREAU  
 P.O. BOX 95, 6 HAZEN DRIVE, CONCORD, NH 03302-0095

APPROVAL NO. 114915

THE PLANS AND SPECIFICATIONS FOR SEWAGE OR WASTE DISPOSAL SYSTEM SUBMITTED FOR:

## OWNER:

ROSEWOOD REALTY TRUST  
 150 LAFAYETTE RD  
 PORTSMOUTH NH 03801

Map No./Lot No.:

Subd. Appl. No.

89610

Subd. Name:

DRAKE'S COMMON

County:

ROCKINGHAM

Registry Book No.:

Registry Page No.:

Probate Docket No.:

(If Applicable)

## COPY SENT TO:

BUILDING INSPECTOR  
 10 CENTRAL RD  
 RYE NH 03870

Type of System:

BA

3641 OWD

Town/City Location:

RYE

## BY APPLICANT: PERMIT NO.

00013

Street Location

LAFAYETTE ROAD

MILLETTTE SPRAQUE & COLWELL, INC  
 PO BOX 427  
 PORTSMOUTH NH 03801

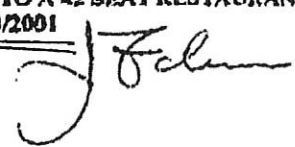
Subsurface waste disposal systems must be operated and maintained in a manner so as to prevent nuisance or health hazard due to system failure.  
 (RSA 485-A:37)

It is unlawful to discharge any hazardous chemicals or substances into subsurface waste disposal systems. Included are paints, thinners, gasoline and chlorinated hydrocarbon solvents such as TCE, sometimes used to clean failed septic systems and auto parts.  
 (Env-W 410.05)

**ADVISE YOUR CONTRACTOR OF REQUIRED CHANGES  
 IN PLANS AS INDICATED BELOW CONDITIONS**

**NOTE: TWO EXISTING SEPTIC TANKS AND FOUR EXISTING DRY WELLS ARE TO BE USED FOR WASTE DISPOSAL. AN ON-SITE AREA HAS BEEN RESERVED FOR A REPLACEMENT SYSTEM IF NEEDED IN THE FUTURE.**

**PLAN MODIFIED TO ALLOW A CONVERSION OF RETAIL SPACE TO A 42 SEAT RESTAURANT WITH A SMALL RETAIL AREA ATTACHED. LOADING REMAINS AS APPROVED. JIF 8/23/2001**



Approved this date: SEPTEMBER 10, 1984

By: KENNETH H. WALKER

Date amended:

N.H. Department of Environmental Services Staff

Amended by:

(OVER)

REVISED 8/97

0000035

NHDES 868 FILE



## Town of Rye BUILDING DEPARTMENT

Peter E. Rowell CFM  
Building Inspector

10 Central Road  
Rye NH 03870

603 964-9800  
prowell@town.rye.nh.us

March 22, 2017

Sylvia Cheever  
264 Atlantic Ave  
N. Hampton NH 03862

RE; Change of Use - 150 Lafayette Road – Currents Restaurant

Ms. Cheever,

I have reviewed your March 9, 2017 request to change the occupancy of your restaurant from the 42 approved the July 6, 2015 Certificate of Occupancy to 64 The number shown on the planning board approval dated April 29, 2010.

At this time I must deny the application for the following reasons;

1. Your Change of Use application submitted on June 17, 2013 stated that the septic system capacity allowed for this use was 42 which agrees with the towns records.

Have the new loading for the restaurant reviewed and approved by the state and town.

2. The letter from the building owner verifying that they are in agreement with this change has not been submitted.

Submit a letter from the owner of the building stating that they have reviewed the March 3, 2017 Change of Use proposal and will allow.

3. Rye PD would like to review seating layout and area for entertainment before the new occupancy is approved.

Submit a new floor plan showing the location of all seating, exits, entertainment, and dancing area.

When this information is submitted I will review with the department heads.

  
Peter E Rowell

Building Inspector

CC by Email:

Town Administrator – Rye Police Department – Rye Fire Department  
Building Owner – Rye Planning And Zoning Admionistrator

[www.town.rye.nh.us](http://www.town.rye.nh.us)



**RYE CONSERVATION COMMISSION  
10 CENTRAL ROAD  
RYE, NH 03870**

April 30, 2017

**RE: 21 Brackett Road**

The Rye Conservation Commission conducted a site walk at 21 Brackett Road on April 26, 2017.

The owners wish to build an 8 foot by 16 foot deck on their existing structure. About 50% of the deck is in the 100 foot tidal buffer from Berry's Brook/Seavey Creek. The deck will be supported by three concrete posts on ledge. The owners have cut some small trees in the buffer but have complied with the requirements of the Shoreland Protection Act by leaving the larger trees in the buffer.

The Rye Conservation Commission recommends that the rest of the tidal buffer be left in its natural state and that no lawn be established in the buffer. If the owners wish to add any plantings to the buffer, they must be included in the NH DES list of native plants. If these recommendations are agreed to, the RCC has no objection to the proposed deck.

Sincerely,

Francis P. (Mike) Garvan II, Clerk





**RYE CONSERVATION COMMISSION  
10 CENTRAL ROAD  
RYE, NH 03870**

April 30, 2017

**RE: 11 Fairhill Avenue**

The Rye Conservation Commission conducted a site walk at 11 Fairhill Avenue on April 26, 2017.

The owners wish to replace an existing septic and leachfield which is in the 75 foot wetland buffer. Additionally they wish to move the existing garage which is in the wetland buffer to a location that will place the new structure outside the buffer.

Mr. Place showed the RCC the location of the current system and described the new system which will be an advanced enviroseptic system. The new system is an improvement over the existing system and will be located further from the wetland than the current system.

Since both of these outcomes are preferable to the existing situation and because the owners are only asking for 71.4 feet where 75 feet is required, the Rye Conservation Commission has no objection to the request and recommends that the ZBA grant relief for the new septic.

Sincerely,

Francis P. (Mike) Garvan II, Clerk



**RYE CONSERVATION COMMISSION  
10 CENTRAL ROAD  
RYE, NH 03870**

April 30, 2017

**RE: 30 LaMer Drive**

The Rye Conservation Commission conducted a site walk at 30 LaMer Drive on April 26, 2017.

Mr. and Mrs. Beynon wish to tear down the existing dwelling and construct a larger home on the lot. Most of the proposed home and driveway are within the 100 foot tidal wetland buffer. The new home would have a 700 square foot greater footprint than the current house and garage. The existing driveway is impervious and the new drive will be constructed with pervious pavers. The net effect would be a reduction of 4,000 square feet of impervious surface on the lot. The back of the lot has a 325 feet border along a stone wall directly adjacent to Awcomin Marsh. This is currently maintained as a grass lawn.

Subsequent to an earlier site walk and recommendation, the Beynons agreed to move the new structure further from the marsh and toward LaMer Drive. This move will require the owners to seek side setback variances. The RCC agrees that it would be preferable from an environmental standpoint to relocate the house further from Awcomin Marsh. The lot is smaller than required by town ordinance so the RCC felt it would be reasonable to grant relief on the setbacks in exchange for moving more of the house out of the tidal wetland buffer.

The owners have also agreed with RCC recommendations to site their propane tank on the northeast side of the house which is out of the tidal buffer. It might require setback relief if sited there but this would be an environmentally preferred location. The Rye Conservation Commission appreciates the cooperation of the Beynons in agreeing to move their dwelling site further from Awcomin Marsh and in agreeing to locate the underground propane tank outside the tidal buffer.

The RCC is concerned about the 100 foot tidal buffer to Awcomin Marsh and notes that even with the new home location, most of the structure and all of the lawn will be in the buffer. The property has some 325 feet of frontage along a stone wall directly adjacent to the marsh. To protect Awcomin Marsh, the RCC recommends that the tidal buffer be planted with a mix of native plants to an average depth of 15 feet with a minimum of 5 feet to aid in filtering possible contaminants before they enter the marsh. This would allow the depth of the buffer plantings to vary with the distance from the house to the wall. Mr. Beynon has indicated he did not want to see that much of his lawn taken up with native vegetation. However, the RCC believes its recommendation is reasonable in light of the fact that the town has expended considerable funds in restoring Awcomin Marsh and protecting this valuable resource is a priority. The RCC

notes that the buffer plantings need not be a solid row of shrubs and bushes but could be staggered for a more pleasing visual effect. The RCC is willing to work with Mr. and Mrs. Beynon and their engineer, Corey Colwell, to create an acceptable buffer planting plan that will protect Awcomin Marsh and still allow the owners to enjoy a lawn area in the tidal buffer.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Garvan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Francis P. (Mike) Garvan II, Clerk

620 Wallis

**Kim Reed**

---

**From:** Kim Reed  
**Sent:** Wednesday, May 3, 2017 10:05 AM  
**To:** 'Gregg M. Mikolaities'; 'Burt Dibble'; 'Charlie Hoyt'; 'Shawn Crapo'; 'Patricia Weathersby'; 'Patrick Driscoll'; Tim Durkin  
**Cc:** 'Ray Tweedie'  
**Subject:** 620 Wallis Road

Mrs. Reed,

Please accept this email as part of the record regarding the application of Stephen and Adele Carter of 620 Wallis Road regarding a shed within setbacks.

I would like the entire board to know that my wife and I support this project. Steve was even gracious enough to come by and walk me through what he was doing before he filed his application. He has done a wonderful job with this property and I think that his request is reasonable and I would ask the entire board to support it. Thank you all for your service to our town.


Respectfully submitted,


Ray Tweedie  
605 Wallis Rd


**Ray Tweedie**

*Senior Mortgage Loan Originator*

NMLS#168746

 [603-842-0286](tel:603-842-0286)

 [603-570-4897](tel:603-570-4897)

 [603-546-4017](tel:603-546-4017)

 [rtweedie@loandepot.com](mailto:rtweedie@loandepot.com)

 [www.loandepot.com/rtweedie](http://www.loandepot.com/rtweedie)

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/Owner:**

Stephen & Adela Carter

**Property:**

620 Wallis Road, Tax Map 16, Lot 104  
Property is in the Single Residence District

**Application case:**

Case # 19-2017

**Date of decision:**

May 3, 2017

**Decision:**

The Board unanimously voted to continue the applicant's request Variances from Section 203.3A for a shed 10' from the rear property line where 30' is required and from Section 203.3B for shed 10' from the side property line where 20' is required to the June 7, 2017 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:**

Charles & Lindsay Beynon of  
362 Main Street, Unit 2, Charleston MA

**Property:**

30 LaMer Drive, Tax Map 13, Lot 44  
Property is in the Single Residence District

**Application case:**


Case # 18-2017

**Date of decision:**

May 3, 2017

**Decision:**

The Board unanimously voted to continue the applicant's requests for Variances from Section 603.2 to tear down an existing building and replace with new; and from Section 301.8B (1) and 301.8B (7) for a driveway 56' from tidal marsh where 100' is required; and for a building 63.8' from the tidal marsh where 100' is required; from Section 203.3B for a building 15.2' from the side property line where 20' is required; and from Section 203.3C for a building 35.2' from the front property line where 40' is required to the June 7, 2017 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

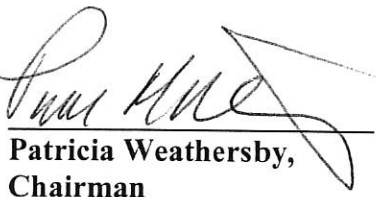
**Applicant/Owner:** Carmen & Katherine Place

**Property:** 11 Fairhill Ave, Tax Map 20.2, Lot 96  
Property is in the Single General Residence & Costal Overlay Districts

**Application case:** Case # 17-2017

**Date of decision:** May 3, 2017

**Decision:** The Board unanimously voted to continue the applicant's requests for Variances from 603.1 for expansion of part of the existing non-conforming structure; from Section 204.3 C for an addition 22' from the front boundary of Fairhill Ave and a garage 21.6' from the front boundary of Eagle Rock Road where 30' is required; from Section 204.3 B for an addition 16.6' from the side property line where 20' is required; and from Section 304.5 for dwelling coverage where 11.7% exists, 17.1% is proposed and 15% is allowed; from Section 301.8B (2) for a septic tank 65' and a leachfield 62.3' from wetlands where 75' is required; and from Section 202.5 for a leachfield setback of 14.4' of rear property line where 20' is required. Applicant requests relief from the Building Code Section 7.9.2.2 for a septic tank that is 65' and a leachfield that is 71.4' from wetlands where 75' is required to the June 7, 2017 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:**

Robinson & Kimberly Berry of  
52 Spring Street, East Greenwich, RI

**Property:**

21 Brackett Road, Tax Map 22, Lot 70  
Property is in the Single Residence District, Flood Zone AE(9)

**Application case:**

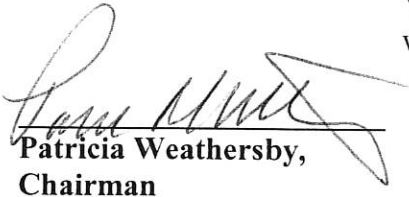
Case # 16-2017

**Date of decision:**

May 3, 2017

**Decision:**

The Board unanimously voted to continue the applicant's request for a Variance from Section 301.8 B (1) & (7) to allow for a porch 95' from the wetland where 100' is required to the June 7, 2017 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:** Sylvia Cheever of 264 Atlantic Ave., N. Hampton NH for  
Currents Restaurant LLC

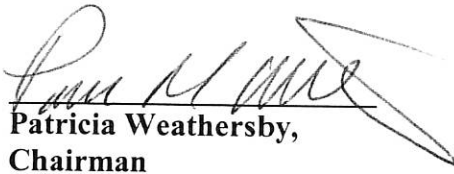
**Owner:** Rosewood Realty Trust

**Property:** 150 Lafayette Road, Tax Map 10, Lot 14  
Property is in the Commercial District

**Application case:** Case # 15-2017

**Date of decision:** May 3, 2017

**Decision:** The Board unanimously voted to continue the applicant's request for an  
Administrative Appeal from the Building Inspector's letter dated March  
22, 2017 per Section 701.1 of the Rye Zoning Ordinance to allow for  
additional seating for the restaurant to the June 7, 2017 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:**

Harbor Street Limited Partnership of  
7B Emery Lane, Stratham, NH

**Property:**

421 South Road, Tax Map 4, Lot 31  
Property is in the Single Residence District

**Application case:**


Case # 14-2017

**Date of decision:**

May 3, 2017

**Decision:**

The Board unanimously voted to continue the applicant's request for a Variance from Section 301 for property located at Tax Map 4, Lot 25 to permit a driveway within the following: 1) a 17' x 16' wetlands crossing 51ft from a vernal pool where a 100 ft setback is required; (2) 2,900 s.f. within the vernal pool buffer where a 100 ft buffer is required; (3) 3,510 s.f. within the wetlands buffer where a 75ft buffer is required to the June 7, 2017 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

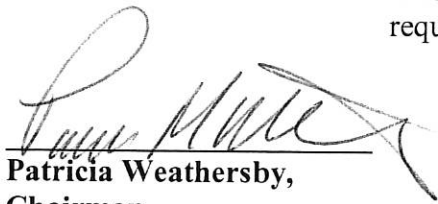
**Applicant/Owner:** Harbor Street Limited Partnership of  
7B Emery Lane, Stratham, NH

**Property:** 421 South Road, Tax Map 4, Lot 31  
Property is in the Single Residence District

**Application case:** Case # 13-2017

**Date of decision:** May 3, 2017

**Decision:** The Board unanimously voted to continue the applicant's request for a Special Exception for property located at Tax Map 4, Lot 25 from Section 301.7(B) to construct a driveway with the following: (1) a 17' x 16' wetlands crossing 51ft from a vernal pool where a 100 ft setback is required. (2) 2,900 s.f. within the vernal pool buffer where a 100 ft buffer is required; (3) 3,510 s.f. within the wetlands buffer where a 75ft buffer is required to the June 7, 2017 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:**

Manuel & Carol Barba

**Property:**

740 Washington Road, Tax Map 11, Lot 103

Property is in the Single Residence and Aquifer Protection Districts

**Application case:**

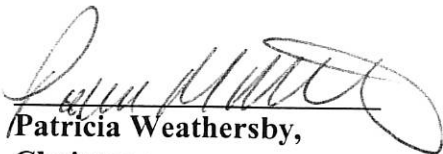
Case # 04-2017

**Date of decision:**

May 3, 2017

**Decision:**

The Board voted to continue its review of the Draft Notice of Decision denying the Administrative Appeal from the Building Inspector's 11-1-2016 Notice of Violation to its next meeting ((June 7, 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:**

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:**

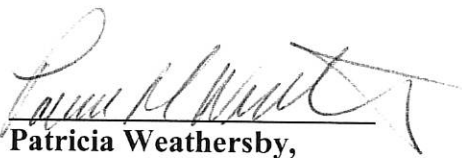
Case # 02-2017

**Date of decision:**

May 3, 2017

**Decision:**

The Rehearing and Reconsideration of the Rye Board of Adjustment's  
March 1, 2017 denial of requested Variances for the purpose of clarifying  
the Board's reasons for denial was continued to June 7, 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.