

TOWN OF RYE – BOARD OF ADJUSTMENT

Wednesday, July 5, 2017

7:00 p.m.

Rye Town Hall

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

Others Present: Planning/Zoning Administrator Kimberly Reed

I. Call to order and Pledge of Allegiance

Chair Weathersby called the meeting to order at 7:05 p.m. and led the Pledge of Allegiance.

Alternate Member Hoyt was seated for Patrick Driscoll.

II. Approval of Minutes:

- **June 7, 2017**

Motion by Burt Dibble to approve the minutes of June 7, 2017 as amended. Seconded by Tim Durkin. Vote: 5-0 (voted: Patricia Weathersby, Shawn Crapo, Burt Dibble, Charles Hoyt and Tim Durkin)

Motion by Shawn Crapo to approve the minutes as amended. Seconded by Charles Hoyt. Vote: 4-0-1 Abstained: Burt Dibble and Tim Durkin (voted: Patricia Weathersby, Shawn Crapo, Charles Hoyt, Gregg Mikolaities)

III. Applications:

Seated for the following: Patricia Weathersby, Shawn Crapo, Burt Dibble, Gregg Mikolaities and Charles Hoyt.

- 1. Harbor Street Limited Partnership of 7B Emery Lane, Statham, 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, 421 South Road, from Section 301.7B to construct a driveway with the following: (1) a 17'x16' wetlands crossing 51ft from a vernal pool where a 100ft setback is required. (2) 2,900sf within the vernal pool buffer where 100ft buffer is required; (3) 3,510sf within the wetlands buffer where a 75ft buffer is required. Property is in the Single Residence District. Case #13-2017. (Continued for the Notice of Decision.)**

Chair Weathersby noted that she did a draft just to give the Board a starting place. The draft was based on her interpretation of everyone's concerns after reviewing the minutes.

The Board reviewed the draft Notice of Decision for the Special Exception.

Member Crapo stated that he feels it encompasses his reasons for denial.

Member Dibble agreed.

Member Crapo commented that he feels in encompasses what the Board thought. His reasons, as well as the majority of the Board. He thinks it is an accurate representation.

Member Hoyt stated that he had reasons that were not as strong, except on number 10. It was too complex and he found it to be too involved to get a landowner to abide by this, especially long term.

Motion by Shawn Crapo to adopt the draft as the Final Notice of Decision with the two clerical changes. Seconded by Burt Dibble. Vote: 5-0 (voted: Patricia Weathersby, Shawn Crapo, Burt Dibble, Gregg Mikolaities and Charles Hoyt.)

Seated for the following: Patricia Weathersby, Shawn Crapo, Gregg Mikolaities and Charles Hoyt. Patrick Driscoll was the fifth member on the original case; however, he was not present at this meeting.

- 2. 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. (Continued for the Notice of Decision.)**

Chair Weathersby noted that the draft reflects what she thought were the thoughts of the majority of the Board. She continued that one other thing she thought of that seemed to be a concern was the concept of the Board feeling that they did not have enough information about the amount of fill, the makeup of the fill, the exact number and type of trees. There was some discussion about not having enough information to say it is not or is going to harm the wetlands. She asked if this was part of anyone's reasoning for denial.

Member Mikolaities stated that it is pretty well documented in the meeting minutes.

Member Crapo stated that what they presented and what they didn't present, did not tip the scales of it is not harmful. He still came to the conclusion it was harmful.

Motion by Shawn Crapo to adopt the draft as the Formal Notice of Decision. Seconded by Gregg Mikolaities. Vote: 4-0-1. Abstained: Burt Dibble (voted: Patricia Weathersby, Shawn Crapo, Gregg Mikolaities and Charles Hoyt.)

The following case was taken out of posted agenda order.

Seated for the case: *Patricia Weathersby, Shawn Crapo, Burt Dibble, Tim Durkin and Charles Hoyt.*

- Petition by Hoefle, Phoenix, Gormley & Roberts, PA on behalf of Manuel Barba for a Rehearing and Reconsideration of the Rye Board of Adjustment's May 3, 2017 denial of Mr. Barba's Variance requests for the property located at 740 Washington Road, Tax Map 11, Lot 103. Case #06-2017. **Public hearing closed during Board discussion on the request.**

Chair Weathersby explained that a written appeal has been filed asking the Board to reconsider the denial of the variances. The standard for reconsideration is whether the Board feels that something they did was unlawful or unreasonable. The reasons why Mr. Barba's attorney feels the Board erred are set forth in their petition.

Referring to the petition, item D, Member Crapo stated that it alleges that the Board erred because there were no special conditions and no fair and substantial relationship; however, the subsequent paragraph does nothing to argue those two points. It talks about where the structure was built and claims that it was built prior to zoning, which was debated whether the existing structure had been modified or whether it was the same structure prior to zoning. That paragraph has no bearing on the alleged error.

Chair Weathersby stated that she takes issue with the last sentence that it has no value as an accessory building because it is sited so far from the main house and barn. She commented that someone thought it was useful.

Referring to item D, Member Dibble stated that there was testimony that when the owners purchased the property they felt the building had value to them. It would not be appropriate to say it has no value as an accessory building. It was valued by somebody.

Member Weathersby stated that she takes issue with the comment that the issues concerning the continued use of the property and building code violations dominated the hearing and caused the Board to err. She disagrees with both of those statements. On the variance request, grandfathering was a fairly minor part of the discussion. The building code violations came out as well; however, she does not think they dominated the hearing.

Member Durkin stated the building code violations were not used as a basis for the Board's decision on the variance request.

Referring to items A & B in the petition, Chair Weathersby stated that it states the Board erred in finding the request to be in contrary to public interest.

Member Durkin stated that one issue is there was reference to the case in 2003, when the Town of Rye permitted use of the structure. However, it doesn't state that the Town subsequently determined at a later date that this is not a permitted use. This is the challenge the Board was

facing. It is unfortunate for the applicant but the Town determined that this is not a permitted use for this structure. The Board was not simply relying on what the Town said in 2003. That raises the issue of contrary to the public interest.

Member Crapo stated the Town's part of the decision in 2003, may or may not have been based on full information. The Board now has full information and looked at the property as a whole. The Board is looking at this project, in this year, moving forward and whether this structure should be allowed. Not whether the building inspector was told the right thing.

Chair Weathersby stated that for the variances it doesn't matter how it go there. The Board was looking at it as if it almost wasn't there and should it be approved. In her mind, she was also factoring in the hardship to the Barbas. The whole "grandfathering" and what happened over time, really did not work into the analysis for the variance request. She pointed out that on pages 2 and 3, they say the Board focused, nearly exclusively, on the small size of the structure and possible building code violations, instead of the purposes of the zoning ordinance. She takes issue with that. The Board spoke a lot about the wetlands and septic.

Member Crapo commented they are also asking to use it as an accessory building and have people live there. There will be a person habiting the structure who would be the person who could be injured or harmed by inadequate egress and septic. The harmony of the neighborhood would be affected by an inadequate septic. He continued that the zoning was created to make sure dwelling are of an adequate size. This structure is not of adequate size. He does not see how this cannot be looked at as being in the public interest.

Member Dibble pointed out the Board had a fair discussion on the encroachment into the wetland and buffers. He thinks that is contrary to item 8 on the petition regarding the public interest.

Chair Weathersby commented the property was challenged such that the Board did not feel the variances were warranted.

Member Crapo stated that he does not see anything in the letter that makes him think the Board made an error in drawing their conclusions.

Member Dibble stated he is not convinced by the notion that an approved septic system is a relevant consideration, since the building code violation is going to prohibit the use of the system.

Member Crapo stated that in reviewing the package as a whole, the Board's denial should result in that place should not be occupied, whether it is now or not.

Chair Weathersby stated that in reading through the petition, she does not see that the Board did anything that was against the laws of zoning or that any of the decisions were unreasonable.

Motion by Tim Durkin to deny the rehearing request. Seconded by Shawn Crapo. All in favor.

Seated for the remainder of the meeting: *Patricia Weathersby, Shawn Crapo, Burt Dibble, Tim Durkin and Charles Hoyt.*

3. **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.**

Attorney Tim Phoenix presented to the Board. He stated that the property is a 15,411sf lot with a 1.5 story, 2-bedroom, single family dwelling. There is a separate garage in the back of the property, which is in the wetland setback and is connected by a breezeway. The Places would like to take the garage down, which will remove the wetland setback violation, attach it to the main house and expand by going up in the existing footprint, (other than the attachment). Because of the location of the house, it does not meet front setback on Fairhill and does not meet the right setback. It currently meets the left setback but will need relief because the proposal will encroach into Eagle Rock Road a bit. Additionally, the proximity of the wetland leaves very little area that the home can be expanded on. He pointed out there is an existing leachfield and septic that is within the wetland. That will be replaced with a new system with the tank being in approximately the same place as the current system. The leachfield will be moved towards the northwest, almost all of it being outside the wetland buffer. He noted that the Conservation Commission has sent a letter to the Board. (He read the letter into the record.)

He read letters from two nearby neighbors in support of the proposal:

- Katherine & Charlie Raynes, 1 Guzzi Drive
- David & Michelle Tyler, 931 Ocean Blvd.

Attorney Phoenix stated that in the plans by Lucy Gorham, Exhibit 4, one the plans was titled "First Floor Plan". In the area where the new garage is going to be attached, it showed a small kitchenette. The original intention of the Places was to have a separate unit; however, the septic calculations bumped up the gallons and the system designed did not approve it. The kitchenette was taken out; however, the wrong plans were submitted that shows it still there. He continued that he is submitting the proper plan and is asking for approval of the addition without the kitchen.

Member Crapo stated that he has heard before the bedrooms, not the bathrooms, is what increases the septic. This is the first time he has heard that a kitchen drives the number up.

Mr. Chagnon explained they have a two bedroom and a one bedroom unit. The one-bedroom unit has minimum flow, which is 225 gallons. The additional 75 gallons counts for the kitchen in that unit. The lot size can only hold a three-bedroom home. It cannot be two units.

Attorney Phoenix stated they need relief due to the proximity of the wetland. The existing home encroaches into the front and right setbacks. He noted that all expansion, except for the newly connected garage, will be within the existing perimeter of the home and more distant from Fairhill than the existing conditions. He pointed out that Sheet C-2 shows the proposed conditions. The garage being moved up is larger than the old one and it encroaches into the Eagle Rock Road setback because it is on a corner and requires a front on both sides. (He pointed out the septic tank and pump on the plan.) He noted that all but just a corner of the leachfield is outside the wetland.

In terms of technical relief, Attorney Phoenix stated that the front of the house is currently at 22ft and the deck is at 18ft, where 30ft is required. The expansion will be at 22ft. The home will not be getting any closer but it needs relief for expansion into the front setback. On the other side, 30ft is also needed because it will be 21.6ft. On the right side, it is 16.6ft and will remain at 16.6ft; however, it will be going up. A variance is needed for 304.5 for dwelling coverage; 15% is permitted, 11% exists and with the expansion it will be at 17.1%. This is 2.1% over the 15% that is required. He asked that the Board consider that if the garage was detached it would not go in the first 15%. It would go in the second 15% because there can be a total of 30% coverage on the lot. The house with the garage attached is 17.7%. The total is about 25%, which is well under the 30%. Wetland buffer relief is needed. The existing septic system is 62.2ft where 75ft is required. The new tank will be 65ft and the pump will be 68.6ft. The leachfield will be 71.4ft. Everything is being moved a little further and the leachfield is almost entirely outside the wetland. He continued that a rear septic is needed for the septic system. It will be at 14.4ft, where 20ft is required. The proposal also needs a variance from 603.1, which says a non-conforming use cannot be expanded. Relief is also needed from Building Code 7.9.2.2 which mimics the wetland buffer.

Member Durkin asked if the new garage meets the setback requirements.

Attorney Phoenix replied no. He explained that the setback on the right side is not changing and the front is not changing. The existing garage violates the wetland setback but does not violate the front setback from Eagle Rock Road. It will be 21.6ft, where 30ft is required.

Member Durkin asked what the setback is currently.

Attorney Phoenix replied that it meets the requirement of 30ft. He noted that moving the garage back would cause more encroachment into the wetland buffer. Also, room was needed for the new septic system. Moving the garage and attaching it gets rid of the breezeway and gets rid of the encroachment. The garage is a little bigger than the old one but it fits with the applicants' needs and lifestyle. He asked the Board to consider that in the context of the whole project, which is esthetically more pleasing and also more environmentally protective than existing conditions.

Member Hoyt asked if the 30ft size dimension was based on the fact that the applicant was trying to get an in-law apartment to work. He asked if the size stayed the same when they realized they could not do the in-law apartment.

Attorney Phoenix stated that it was not only driven by the in-law apartment. The Places need ample space in the garage for their cars, storage and a work shop. This was the design that the architect came up with based upon the Places' needs. (He reviewed the criteria for granting the variances.)

Chair Weathersby asked for the height of the building.

Lucy Gorham, architect, explained the average grade is 26ft in height. The existing house is 22ft. The proposed will be a couple of feet under the 28ft height maximum.

Speaking to Mr. Chagnon, Chair Weathersby commented that the leachfield is still a little bit in the wetlands buffer. She asked if it would be possible to move it out of the buffer completely.

Mr. Chagnon explained the leachfield was designed to be outside the wetlands buffer. However, in bringing it through the process with the Town, the Rye Water District requested a 25ft setback from the water main. This pushed it back a bit. He commented that the other fact to keep in mind is that this is a poorly drained wetland. As far as the State is concerned, it is only a 50ft wetland setback. The Town has a 75ft requirement. He pointed out that the location would meet the State rules.

Chair Weathersby pointed out that the lot to the north is a vacant lot that is partially in the wetland.

Mr. Chagnon confirmed. He commented the wetland is on that lot, not on the Places' property.

Member Crapo stated that it appears to be designed to be a house plus a guest house. The kitchen has been eliminated but it has not gotten smaller. The house is still increasing 30% with bulk going up within that. Compared to what is there to what is proposed, it seems like a lot of bulking.

Carmen Place, applicant, stated that the garage that is there can only hold one car. He noted that they have two cars, a motorcycle and a kayak. They have three boys that are 26, 27 and 28.

They will soon be having families. The idea for the space above the garage is so they can stay there when they visit. The garage is the size for what is needed for space. He continued that right now it is a one-bedroom house.

Chair Weathersby asked for the size of the garage.

Mr. Place replied that the proposed garage is 30x30. It is a two-car garage with a work shop.

Chair Weathersby asked if the existing home is being torn down.

Mr. Place replied the garage is just being built.

Chair Weathersby opened to the public for comments or questions. Hearing no comments or questions, she closed the public hearing at 8:10 p.m.

Member Hoyt stated that it does look like it is bulking a lot more than the Board would like to see; however, none of the neighbors are opposed to it. He thinks it is a clever floor plan. He is for the project. He cannot find a reason to say he is against it, except for the bulking aspect. If the garage was made smaller there would not be enough room for storage. The standard garage is 24ft deep. That is not enough room for anything but a car.

Member Crapo commented that they would lose the staircase on the end.

Member Hoyt stated that he does not have a problem with the staircase. It provides another means of egress out of a space that will become a living space.

Member Crapo stated that he cannot support that it is a hardship and needs that relief to have a residence inside the residence. It would be reasonable to expand the regular residence but this is getting into variance relief, near the wetlands, to basically accommodate another apartment. He thinks it is getting too big for what is reasonable.

Chair Weathersby pointed out the garage is not in the wetland buffer.

Member Crapo stated it is in the wetland setback. It is adding to the overall bulk and adding to the lot coverage.

Member Durkin stated that the oddity of the lot is that there are two frontages. The variance setback is from the garage to the road. Basically, two frontage setback requirements are needed, which is pretty unusual.

Chair Weathersby commented that the reason for the two frontage setbacks is for sight lines around a corner. Whereas here, it is not right at the corner. It is down Eagle Rock Road.

Member Durkin commented the elevation is lower for that part of the stretch. He continued that the applicant did the best they could, given the configuration of the lot and dealing with two front setback requirements.

Member Hoyt stated they did a really good job figuring out how to make it come together.

Chair Weathersby stated that she does not believe the “interior apartment” was the driving factor for the size of the garage. People need space for two cars, a snow blower, and lawn equipment, etc. With that said, if the garage was a little less wide, the septic could probably be moved in a bit more and not have that much relief there. She continued the lot behind this property is vacant. She does not really have a problem with the proposal. She does not like that there is so much bulk of the main house; however, she does not dislike it enough to deny it.

Member Hoyt stated that if there were people present that felt it blocked their view and lessened the value of their home, he would have a hard time getting on board; however, two letters of support have been received from abutters. He thinks it is a tasteful home.

Member Dibble stated that he is sensitive to what Member Crapo has said. He does not think the Board ever sees applications that ask for less. It becomes a balance of whether justice is done. He does not think the public harm over balances what is being asked for.

Speaking to Member Crapo, Chair Weathersby asked if he is opposed to some aspects of the proposal.

Member Crapo stated that it is just the general bulking; however, there is no real zoning against the bulking. He does not want to see that five years from now it is being used as an accessory apartment or it being expanded, unless the septic is expanded.

Member Hoyt commented that they would have to go before the Board again.

Chair Weathersby commented that the garage and the space above is within the dwelling coverage. It is increasing but it is way under the 30%. She does not find that the garage is an issue.

Chair Weathersby called for a vote on variances to Sections *603.1, 204.3C, 204.3B, 304.5, 301.8B (2) and 202.5*:

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

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

3. Substantial justice is done?

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

7. The proposed use is a reasonable one?

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

Chair Weathersby called for a vote for a waiver to Building Code 7.9.2.2; for septic tank being 65ft and leachfield being 71.4ft from the wetlands, where 75ft is required.

- Would enforcement of 7.9.2.2 do manifest injustice and would be contrary to the spirit and purpose of the building code and public interest?

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

Motion by Burt Dibble to approve the requested variances for Carmen & Katherine Place for property owned and located at 11 Fairhill Ave., to Sections 603.1, 204.3 C, 204.3 B, 304.5 301.8B (2) and 202.5 and relief from the Building Code Section 7.9.2.2. Seconded by Charles Hoyt. All in favor.

Motion by Shawn Crapo to continue the applications of Glenn Walker and Elizabeth Fairchild and Theresa and Richard Carey. Seconded by Burt Dibble. All in favor.

- 4. 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.**

Attorney John Bosen, representing the applicant, spoke to the Board. He explained the proposal is to demolish the existing home and construct a new home. The house is located on the southern end of LaMer Drive. The back of the lot is the wetland setback. The lot is an odd shape and is very difficult to work with. He noted that the lot is encumbered by the 100ft wetland setback. The property is located in the Single Zone and is just outside the Coastal Overlay District plus the Conservation District. The lot is non-conforming; having 150ft of frontage where 200ft is required. The lot size is 43,603sf, where 66,000sf is required. A variance from 603.2 is required because it is impossible to redevelop the property and conform to those requirements. He reiterated that the 100ft wetlands setback encumbrances the property, which is currently violated by the existing home. There have been several meetings with the Conservation Commission and they have recommended that the proposed structure be moved further away from the wetlands and closer to the front of the lot. By doing so, it causes the house to impinge on the front setbacks. He continued that the existing paved driveway will be removed. Impermeable surfaces for a new driveway and patio will be installed. There will be a reduction in overall site area coverage of approximately 4,000sf. Following the recommendations of the Conservation Commission, the applicant will install a 15ft protective buffer at the rear of the property near the wetlands. (He reviewed the criteria for granting the variances.)

Member Crapo asked what is meant by moving the house forward.

Attorney Bosen explained that it will be moved forward towards LaMer Drive and away from the wetlands.

Member Crapo asked if there is the ability to turn the house so it is more parallel to the marsh and achieve any compliance with the setbacks.

Corey Colwell, MSC Engineering, explained that if the house is turned to try to fit it more into the buildable area the side yard setback would be significantly reduced.

Member Hoyt asked why it could not be smaller.

Mr. Colwell explained the proposed building is the same length as the existing. The new home will not be any longer than what exists there now. What is important to note is that when the proposal started, they tried to avoid the front yard and side yard setbacks. A couple of conditions go against the existing conditions. The lot starts at elevation 16 at the road and goes to elevation 8 at the marsh but it is all lawn right up to the marsh. The Conservation Commission is concerned with fertilizers and runoff from pavement going into the marsh. The way this will be addressed is by ripping up all pavement from the site and replace it with pavers. There will also be a significant landscape bed, at an average of 15ft wide, such that any runoff going into the marsh that is not filtered by the permeable driveway will be filtered by the vegetation.

Member Durkin asked about the narrow part of the yard.

Mr. Colwell explained that this was made purposely narrow because the Beynons want some yard for their children.

Member Durkin commented that it looks like a pretty big yard. He asked the approximate acreage of the lawn.

Mr. Colwell explained the site itself is an acre. The footprint of the building is about 2700sf. The lawn is taking up about 25%. It is about .75 in acreage.

Chair Weathersby read the letter from the Conservation Commission.

Member Crapo stated that one potential condition on this might be adherence to their letter. In the letter, it said that their recommendation may or may not have met some resistance from the Beynons. He asked if what is being proposed is a joint compromise.

Attorney Bosen stated that the Beynons actually wanted more yard. The existing condition already violates that setback. This was the compromise. The Beynons are okay with the compromise.

Chair Weathersby asked if the footprint is the same size as the existing home.

Mr. Colwell explained that on the existing conditions plan the existing building footprint is in red. The proposed footprint is the solid grey. Towards the front, the building is a little wider.

Member Hoyt asked why the building could not be pushed to the southwest.

Mr. Colwell explained that the building was to the southwest when they started but the Conservation Commission said it was too close to the wetland.

Member Hoyt stated that he does not understand the hardship on the 40ft setback. He commented that the house is huge.

Mr. Colwell stated that the Conservation Commission said that pushing it back into the side and into the front is favorable and they would write a letter to the Board that they would support that. He continued that they were reluctant but agreed.

Attorney Bosen pointed out that there is going to be an overall improvement of about 4,000sf in coverage.

Chair Weathersby noted that the applicant has the right to build on the existing footprint, which is further back but at the same length. This is less obtrusive.

Speaking to the architect, Member Hoyt asked what constituted the footprint.

Julie, DeStefano Architects, explained that they initially looked at working with the existing footprint in order to use the existing basement. Trying to be as conservative as possible with encroachments on both the street side and wetland side. That is the driving force that led to the design as it is.

Member Hoyt pointed out that the Board does not have floor plans so they cannot see the function. They can only see the elevations.

Attorney Bosen stated that the hardship is in the lot. The lot is an awkward shaped lot. The existing conditions have already violated the wetland. This would be an improvement over what is already there. What they had to work with is this weird shaped lot.

Referring to the buffer zone, Member Durkin asked what exists there now.

Mr. Colwell pointed out on the plan what exists there now. He noted that the current house is 70ft to the marsh. (He pointed out the proposed landscape areas on the plan.) He stated that the Conservation Commission wanted to see significant vegetation in the form of landscape over lawn.

Member Durkin asked who is going to make sure that gets done. What happens in three to five years if that gets converted back into lawn?

Mr. Colwell explained that they would be in violation of the variances and the building inspector would have recourse to mandate that the vegetation be put back in.

Attorney Bosen explained that the applicant could receive an order from the Town to put it back in compliance.

Member Durkin stated that he does not believe the buffers are enforceable.

Chair Weathersby commented that the Conservation Commission Members keep their eyes on these properties.

Member Durkin asked if she is comfortable in her review of other properties with such conditions.

Chair Weathersby stated that she is comfortable with it and there will be some eyes on this marsh.

Member Crapo pointed out the Town and the Conservation Commission is the direct abutter on that border. The owner of the abutting property is Southeast Land Trust and the Town of Rye. They routinely monitor all their properties.

Member Hoyt stated that it is a fine-looking project. He is just having a hard time jumping on board with that tiny little piece. If there were floor plans, he could see the dimensions. The Board is only looking at site plans. The building is a 2700sf footprint, which is a very large building. If he is going to vote in favor, he wants to be sure he is doing due diligence.

Julie explained that a lot of the projects they are able to push and pull because of the geometry. This project is very symmetrical. It is not as easy to pull in and out.

Member Crapo stated that it could be said that it is being torn down so there is a fresh pallet to work with. He continued that they conceptually did that and now they are trying to 100% comply with the Conservation Commission's recommendation to move back, which requires more relief. In his mind, protecting the marsh versus protecting the 4ft closer to the marsh, value wise, is not affecting the neighbors all that much. It is a treed wood line. The neighbors cannot see that corner of the house. In his mind, he is feeling okay with the 3 or 4ft encroachment on the setback.

Member Hoyt asked if the neighbors were contacted.

Attorney Bosen replied that the neighbors have been contacted and have seen plans.

Chair Weathersby opened to the public for comments or questions. She noted that there is no one present to speak. The Board has not received any letters, other than the letter of April 30th from the Conservation Commission.

Member Durkin asked when the existing home was built.

Mr. Colwell replied that the lot was created about 1975 and was built on around 1982.

Hearing no further comments, Chair Weathersby closed the public hearing at 9:03 p.m. Member Hoyt stated that he likes the project. There are no neighbors that are opposing this. He is finding it a little difficult to find a hardship but he is going to overlook that given there aren't any abutters in opposition. He commented that it is a big house. Going back to the side yard setback, he thinks they can rework the architecture to make that setback but he is for the project.

Chair Weathersby stated that she struggles a little with the size. Something could be designed that was a little smaller and it would need less setback relief, at least on the side and maybe from the wetland. With that said, what she struggles with is that they can build the same house in the same location. The Board would give them relief if they used that exact same footprint and just tweaked a dormer or something. That would probably pass and yet this is less impactful to the wetlands; significantly. They need front relief but there is still 35ft for the front yard. The district has a 40ft requirement. She has no problem with the front. The side is 15 plus feet and the neighbor seems to be okay with it. The location of the house is better than what is there and the footprint is roughly the same.

Member Dibble stated that the bulk is to the depth so no one ever sees it. It is angled to the one neighbor. His only concern is the gable character on the front, which gives it a taller appearance than it might otherwise have if it had a different type of architecture.

Chair Weathersby pointed out that they do not need any height relief.

Member Crapo pointed out that when they normally look at bulk, such as the previous application, the bulk is closer to the street and domineering. Perception wise it is farther away. He does not think the side setback is a detrimental issue to the neighbor. He does not see the benefit the someone is going to gain by pushing it in 16.8ft to the structure.

Speaking to Chair Weathersby, Member Durkin asked why she felt this was less impactful than building on the existing footprint.

Chair Weathersby commented that it is further from the tidal marsh. They will be putting in the plantings and putting in a new leachfield. She commented that it is a beautiful property and deserves a nice home.

Member Dibble stated that he is inclined to agree that the property deserves a nice house. It would be a shame to not achieve the highest and best use.

Member Durkin asked how the buffer enforcement would be addressed.

Chair Weathersby noted that it would be a condition of approval. If they are in violation, they could receive a Cease and Desist from the building inspector. She suggested that they might have to send something that shows they are in compliance every two years.

Member Crapo stated that the Southeast Land Trust and Conservation Commission own the property next door. If they see something, they are going to have an issue. He does not see that they need to put a restriction that the building inspector has to go to the site. There are plenty of properties in Town that have restrictions that do not necessarily have a follow up.

Member Durkin stated that if this is going to be a condition of the property, there has to be some means for monitoring. With the continuing pressure of tidal buffers coming up more and more, it needs to be addressed.

Member Hoyt asked if they should burden the homeowner to pay some professional every two years to say that they are in compliance.

Member Durkin stated that the applicant is saying that they are going to do this. It is incumbent on the Board to make sure that is done.

Chair Weathersby suggested that they make a condition that the homeowner allows the Rye Conservation Commission to go on to their property, at least once per year, to inspect the vegetative buffer.

Member Hoyt pointed out that if this is done it would need to be done for everyone.

Member Crapo stated it is not their jurisdiction to require the building inspector to do an inspection. The building inspector can stamp their as-built plans to show that it was installed.

Member Hoyt commented that 100% of the construction has to be an as-built.

Chair Weathersby asked for Attorney Bosen's thoughts.

Attorney Bosen stated this is no different than any approval that goes before any municipal approval board that is approved with conditions, whether it be a landscape buffer, dark sky lighting or a tree line. It is a condition of approval that is required to be met. If it is not met, the landowner is in violation and the town has powers to issue a Cease and Desist Order the moment that construction varies from what has been approved.

Chair Weathersby stated that she personally thinks there will be enough eyes on this that she is not all that concerned. She continued that it sounds like there is a consensus to approve the project with a condition that the vegetative buffer be built. The majority feels as though the existing "teeth" to enforce the condition are sufficient.

Member Durkin stated that he does not feel it is sufficient enough.

Chair Weathersby called for a vote on variances to **Sections 603.2, 301.8B (2) 203.3B and 203.3C, with the condition that the tidal buffer be planted with a mixture of native plants with an average depth of 15ft and a minimum of 5ft, as outlined in the April 30th Conservation Commission letter.**

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

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – No
Burt Dibble – Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – No
Burt Dibble – Yes
Patricia Weathersby – Yes

3. Substantial justice is done?

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – No
Burt Dibble – Yes
Patricia Weathersby - Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – No
Burt Dibble – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – No
Burt Dibble – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – No
Burt Dibble – Yes
Patricia Weathersby – Yes

Motion by Burt Dibble to grant variances to Charles and Lindsay Beynon, for property owned and located at 30 LaMer Drive, from Section 603.2, 301.8B (1), 301.8B (7), 203.3B and 203.3C, with a condition of the construction of a protective marsh buffer as proposed by the Rye Conservation Commission. Seconded by Shawn Crapo.

Vote: 4-1 Opposed: Tim Durkin

Motion by Burt Dibble to continue the application of Dan and Diane Conway to the August meeting. Seconded by Tim Durkin. All in favor.

- 5. 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.**

Stephen Carter, applicant, spoke to the Board about his proposal to place a 10x12 shed in the rear corner of their property. They do not have a garage and are seeking storage for garden tools, bikes and the snow blower, etc. The location is where four abutting properties meet. It is the

least obtrusive location because it is a lower spot. The request is for variances to the rear and the side setbacks. He is seeking to put the shed 10ft off each of the boundaries. He noted that the property is small. It is 100x150. (He reviewed the criteria for the variances.)

Mr. Carter noted that the shed will be on concrete blocks. There is a drainage pipe along the back of the property and there used to be a ditch. When the property was developed in the rear, they wanted to fill it in. His father bought the back 25ft and the drainage pipe was put in and it drains towards Acorn Acres. It starts at his property and runs underneath. It has been there for 50 years. He pointed out that they have to be able to access the pipe. When he talked to the Public Works Director, he said they just have to be able to move the shed if they had to get at the pipe. He reiterated that it will be on concrete blocks and pulled forward off the right-of-way.

Chair Weathersby opened to the public for comments. None were heard. She noted that the Board has a letter from Ray Tweedie abutter of the property. She closed the public hearing at 9:42 p.m.

Member Crapo stated it is reasonable. There should just be a condition on the letter from the Town saying they reserve the right to be able to move the shed to access the drainage pipe and any construction cannot impede access.

Chair Weathersby called for a vote on variances to Sections 203.3A and 203.3B with the conditions; ***Shed construction shall not impede any drainage within the easement area or entering the drainage area from abutting properties. Should future construction be contemplated by the town within the drainage easement area the shed will be removed from the easement at no cost to the Town of Rye.***

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

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

3. Substantial justice is done?

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

7. The proposed use is a reasonable one?

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

Motion by Burt Dibble to approve the application of Stephen and Adela Carter, for property owned and located at 620 Wallis Road, for variances to Section 203.3A and 203.3B, as published, with the conditions that the shed construction shall not impede any drainage within the easement area or entering the drainage area from abutting properties and should future construction be contemplated by the town within the drainage easement area the shed will be removed from the easement at no cost to the Town of Rye. Seconded by Shawn Crapo. All in favor.

- 6. Glenn Walker & Elizabeth Fairchild for property owned and located at 531 Brackett Road, Tax Map 17, lot 47 request a variance from Section 510.3 to allow for an 8ft fence where 6ft is allowed. Property is in the Single Residence District. Case #20-2017.**

- Continued to the August meeting. (See motion above)

- 7. Richard F. Carey on behalf of Theresa Carey & Richard Carey Revocable Trust, Theresa Carey & Richard Carey Trustees, 11 Robandy Road, Andover, MA, for property owned and located at 11 Surf Lane, Tax Map 8.4, Lot 71, request Variances from Section 603.1 for expansion of a non-conforming building; Section 204.3C for addition of second floor 11' +/- within the front boundary where 13' exists and 22.2' is required; from Section 204.3C for an outdoor shower within the 22' Breakers Road front boundary; from Section 204.3B for addition within the side boundary 8.6' where 8.6' exists and 20' is required; from Section 304.5 for building coverage of 19.1% where 16.8% exists and 15% is allowed; from Section 500.2 for two (2) parking spaces where none exist and from Section 500.3 for the location of the parking spaces located within the front yard. Property is in the General and Coastal Overlay Districts. Case #21-2017.**

- Continued to the August meeting. (See motion above)

8. **Andrew Foss for property owned and located at 780 Ocean Blvd, Tax Map 23.1, Lot 291-6**, requests a Variance from Section 210.3A to construct a solar array 1' from the rear property line where 30' is required. **Property is in the Business, Coastal Overlay Districts and SFHZ, AO Elv. 1". Case #22-2017.**

Member Hoyt noted that he has worked for Mr. Foss and may be in the future; however, he feels it will not impede his judgement in deliberating on what he thinks is best.

The members did not have an issue with Member Hoyt sitting for the application.

Andrew Foss, applicant, explained that this is part of a project to convert the house entirely to electric. He is planning to get rid of the oil burning furnace and have reliable power. The south location was chosen intentionally because the east location would be very visible to the neighbors. This is located in an area so it will not be hit directly during a storm. The Rye Conservation Commission looked at the plan. NH DES said it does not change the impervious because it is over the driveway and is small enough that they did not require a permit. He noted that it is a 5-kilowatt system and the dimensions are 12x24ft. He has spoken to the neighbors and they are all in agreement. Krista Atwater, Abutter, has emailed a letter to the Board.

Member Durkin asked how many individual panels there are.

Mr. Foss replied 20. The array will be at a 15-degree angle facing south. He explained how the array will be installed on the property.

Chair Weathersby asked if the panels are reflective.

Mr. Foss explained they are flat black. Their job is to absorb the light. He does not think the reflections onto Route 1A or towards the neighbors is going to be an issue.

Chair Weathersby opened to the public.

Jim Freiburger, 784 Ocean Blvd, spoke in support of the proposal.

Chair Weathersby read a letter received from Krista Atwater, 805 Ocean Boulevard.

Hearing no further comments, Chair Weathersby closed the public hearing at 9:58 p.m.

The Board did not have any objections to the proposal.

Chair Weathersby called for a vote on variance to *Section 210.3A*:

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

Shawn Crapo – Yes

Charles Hoyt – Yes

Tim Durkin – Yes

Burt Dibble – Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

3. Substantial justice is done?

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes

Burt Dibble – Yes
Patricia Weathersby – Yes

7. The proposed use is a reasonable one?

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

Motion by Burt Dibble to approve the application of Andrew Foss, for property owned and located at 780 Ocean Blvd, for a variance to Section 210.3A. Seconded by Shawn Crapo. All in favor.

- 9. James Freiburger of 24 String Bridge S-8, Exeter, NH, for property owned and located at 784 Ocean Blvd, Tax Map 23.1, Lot 29-11, requests a Variance from Section 201.3A for a deck replacement with the addition of a 16'x10' bench 25' from the rear property line where 30' is required. Property is in the Business, Coastal Overlay Districts and SFHZ, AO Elv. 1". Case #23-2017.**

James Freiburger, 784 Ocean Blvd, spoke to the Board in regards to replacing an existing deck that is rotted. The first step is to replace the existing railing and bring that up to standard. The second step is the addition of bench that is 16x10. The condo board has approved the request.

The Board reviewed the plan. There was discussion on the location of the deck and bench.

Chair Weathersby opened to the public for comments.

Andrew Foss, 780 Ocean Blvd, spoke in favor of the proposal.

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

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

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

3. Substantial justice is done?

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Charles Hoyt – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

Motion by Burt Dibble to approve the application of James Freiburger, for property owned and located at 784 Ocean Blvd, for a variance to Section 201.3A, as advertised. Seconded by Shawn Crapo. All in favor.

- **Dan & Diane Conway for property owned and located at 2 West Road, Tax Map 7, Lot 37, request a Variance from Section 203.3C for a porch within the front property boundary where 28' exists, 30' is proposed and 40' is required. Property is in the Single Residence District. Case #25-2017. Continued to the August meeting. (See motion above)**

Adjournment

Motion by Charles Hoyt to adjourn at 10:15 p.m. Seconded by Shawn Crapo. All in favor.

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

Respectfully Submitted,
Dyana F. Ledger

BOARD OF ADJUSTMENT

-Rye, New Hampshire- NOTICE OF DECISION

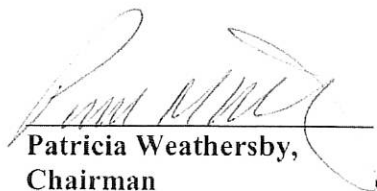
- Applicant/Owner:** Harbor Street Limited Partnership of
7B Emery Lane, Stratham, NH
- Property:** 421 South Road, Tax Map 4, Lot 31
Property is in the Single Residence District and Aquifer and Wellhead
Protection District
- Application case:** Case # 14-2017
- Date of meeting:** June 21, 2017
- Date of Decision:** July 5, 2017
- Decision:** The Board voted unanimously to deny the Applicant's request for
Variances from Sections 301.7(B)(1) (5) and (7) to construct a driveway
and associated bridge 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. of disturbance within the 100' vernal pool buffer; and
 - (3) 3,510 s.f. of disturbance within the 75' wetlands buffer (some overlap
of buffers).

The Board found that such request failed to satisfy the criteria for granting variances – the specific reasons include:

1. Construction of the driveway and wetlands crossing involves tree and vegetation cutting, the addition of fill, grading, installation of bridge footings, erection of bridge and paving, all within the in the wetland buffer and vernal pool buffer, the effects of which may be detrimental to the environment and/or public water resources;
2. The proposed driveway crossing the wetlands will be utilized by construction vehicles, cars, delivery trucks, septic trucks and other maintenance vehicles which carry risks of contaminating the wetlands by leakage or spillage;
3. The requested driveway enables the development of Lot 2 for a single-family home with associated septic system. While such uses are physically located outside the environmental buffers, proposed lot 2 consists primarily of wetlands, a vernal pool and associated buffers and at least the buffers will be likely utilized by the proposed homeowner during normal use. In addition, construction of the home and septic system will involve the addition of fill, grading and

other construction activities. Such use and development have the potential to detrimentally affect the quality of the wetlands, vernal pool and aquifer due to potentially inadequate maintenance, runoff, pests and nonadherence to subdivision conditions designed to protect the wetlands and vernal pool;

4. Protection of the wetlands, vernal pool and aquifer would have been dependent in a large part on proposed use restrictions and covenants in the property deed and/or homeowners association regulations; the compliance therewith cannot be guaranteed, particularly long term.
5. Alternate routes to the upland on proposed lot 2 that do not involve crossing a wetland, do not disturb a vernal pool buffer and are less impactful to wetland buffers are possible (although may involve reconfiguration of subdivision plan);
6. Denying the variances does not create an unnecessary hardship to the applicant. The lot consists of 3.86 acres which the applicant plans to combine with other parcels for a total development parcel of approximately 59 acres. Proposed Lot 2 does not yet exist but is part of the proposed subdivision containing a total of 17 building lots. The development parcel may continue to be developed into at least 16 lots. Any hardship is primarily economic.
7. The values of surrounding properties will be diminished if the variances are granted.
8. The proposed wetlands crossing and buffer disturbances are contrary to the public interest.
9. There are no special conditions of the property that distinguish it from other properties in that area. It is a single residential lot currently and is similar to the other lots in the neighborhood.
10. Granting the variances would allow for further development of the land (proposed lot 2) which will alter the essential character of the locality.
11. The loss to the applicant by denying the variances (possible loss of one potential building lot) is not outweighed by the gain to the general public of protecting its wetlands, aquifer and neighborhood.
12. Granting the variances would threaten public health, safety and welfare.



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 and Aquifer and Wellhead Protection District

Application case: Case # 13-2017

Date of Meeting: June 7, 2017

Date of Decision: July 5, 2017

Decision: The Board voted 4 to 1 to deny the Applicant's request for a Special Exception from Section 301.7(B) to construct a driveway and associated bridge with the following:


- (1) a 17' x 16' wetlands crossing 51 ft from a vernal pool where a 100 ft setback is required;
- (2) 2,900 s.f. of disturbance within the 100' vernal pool buffer; and
- (3) 3,510 s.f. of disturbance within the 75' wetlands buffer (some overlap of buffers).

The Board found that such request failed to satisfy the criteria for granting a special exception based upon the following reasons, any one of which members relied upon for denying the special exception:

1. The lot consists of 3.86 acres which the applicant plans to combine with other parcels for a total development parcel of approximately 59 acres. Proposed Lot 2 does not yet exist but is part of the proposed subdivision containing a total of 17 building lots. The relief requested is not essential to the productive use of the land as the development parcel may continue to be developed into at least 16 lots.
2. Economic advantage is the sole reason for the requested special exception;
3. The proposed driveway which crosses wetlands and disturbs both vernal pool and wetlands buffers is reasonably likely to be detrimental to the environment and/or public water resources;
4. Construction of the driveway and wetlands crossing involves tree and vegetation cutting, the addition of fill, grading, installation of bridge footings, erection of bridge and paving, all within

the in the wetland buffer and vernal pool buffer, the effects of which may be detrimental to the environment and/or public water resources;

5. The proposed driveway crossing the wetlands will be utilized by construction vehicles, cars, delivery trucks, septic trucks and other maintenance vehicles which carry risks of contaminating the wetlands by leakage or spillage;
6. The requested driveway enables the development of Lot 2 for a single-family home with associated septic system. While such uses are physically located outside the environmental buffers, proposed lot 2 consists primarily of wetlands, a vernal pool and associated buffers and at least the buffers will be likely utilized by the proposed homeowner during normal use. In addition, construction of the home and septic system will involve the addition of fill, grading and other construction activities. Such use and development have the potential to detrimentally affect the quality of the wetlands, vernal pool and aquifer due to potential inadequate maintenance, runoff, pets and nonadherence to subdivision conditions designed to protect the wetlands and vernal pool;
7. Construction and maintenance of the proposed driveway may negatively affect the wetland and/or public water resources;
8. The proposed wetlands crossing and buffer disturbance are injurious and detrimental to the neighborhood;
9. The proposed driveway and related wetlands crossing and buffer disturbance are not in harmony with the general purpose and intent of the zoning ordinance nor in accordance with the general or specific rules contained therein.
10. Protection of the wetlands, vernal pool and aquifer would have been dependent in a large part on proposed use restrictions and covenants in the property deed and/or homeowners association regulations; the compliance therewith cannot be guaranteed, particularly long term.
11. The special exception is not essential for the productive use of the land.



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: Hoefle, Phoenix, Gormley & Roberts, PA

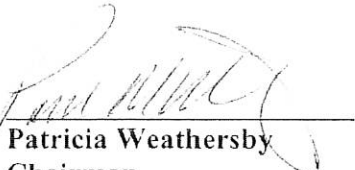
Owner: Manuel & Carol Barba

Property: 740 Washington Road, Tax Map 11, Lot 103
Property is in the Single Residence and Aquifer Protection Districts

Application case: Case # 06-2017

Date of decision: July 5, 2017

Decision: The Board unanimously denied the applicant's request for a Rehearing and Reconsideration of the Rye Board of Adjustment's June 7, 2017 denial of Mr. Barba's Variance requests for the property located at 740 Washington Road, Tax Map 11, Lot 103, Case #06-2017.



Patricia Weathersby
Chairman

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

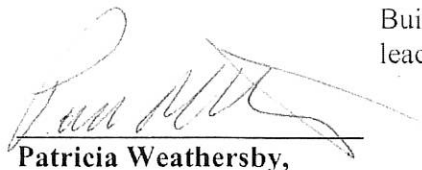
Date of decision:

July 5, 2017

Decision:

The Board unanimously voted to approve 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; from Section 204.3 B for an addition 16.6' from the side property line; and from Section 304.5 for dwelling coverage of 17.1%; from Section 301.8B (2) for a septic tank 65' and a leachfield 62.3' from wetlands; and from Section 202.5 for a leachfield setback of 14.4' of rear property line.

The Board unanimously voted to approve the applicant's requests for Building Code relief from Section 7.9.2.2 for a septic tank that is 65' and a leachfield that is 71.4' from wetlands.



**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:

July 5, 2017

Decision:

The Board voted 4 to 1 to approve the applicant's requests for Variances from Section 603.2 to tear down an existing building and replace with new; from Section 301.8B (1) and 301.8B (7) for a driveway 56' from tidal marsh and for a building 63.8' from the tidal marsh; from Section 203.3B for a building 15.2' from the side property line; and from Section 203.3C for a building 35.2' from the front property line with the following condition:

1. The applicant will plant and maintain a mixture of native plants to an average depth of 15 feet with a minimum of 5 feet along the tidal buffer to aid in filtering possible contaminants before they enter the marsh.



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.



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

March 30, 2017

RE: 30 LaMer Drive, Map 14 Lot 44, Charles & Lindsay Beynon, owners

The applicants 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 and its driveway will be closer to the wetland than the existing dwelling and driveway. The southeast corner of the proposed drive and house would be about 50 feet from the wetland marsh. 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 the wetland marsh. This is currently maintained as a grass lawn.

Mr. Gagnon, TFM/MSCEngineering, explained that the building envelope and location was partly determined by the Rye side yard setback requirements. The RCC asked if the home could be sited further from the marsh and closer to LaMer Drive. Mr. Gagnon indicated that would be possible if a variance was granted for the side setbacks. Mr. Beynon said that he wouldn't object to moving the house further from the marsh. The RCC members present agreed that it would be preferable from an environmental standpoint to relocate the house further from the 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 RCC had concerns about one of the two proposed locations for an underground propane tank. One of the proposed locations is directly in back of the home and is in the buffer about 50 feet from the marsh. The RCC members agreed that the other location on the northeast side of the house would be preferable since it is out of the tidal buffer. It might require setback relief if sited there but this would be an environmentally preferred location. It might also be possible to locate the underground tank could also be sited out of the tidal buffer on the southwest side of the drive

The RCC is concerned about the amount of disturbance and fill that would be required in the buffer since there is an elevation change near the back edge of the proposed home. Mr.

Gagnon did not have that information but said he would get it. The RCC suggested that the 325 foot property boundary adjacent to the marsh be planted with a mix of native plants to a depth of about 20 feet to aid in filtering possible contaminants before they enter the marsh. Mr. Beynon indicated he would not be opposed to that and the RCC can provide the NH DES list of native plants to TFM/MSA Engineering and Mr. Beynon.

The commission asked about the septic and Mr. Gagnon did not have information on that. Rye Building Inspector Peter Rowell should be able to provide more information.

Recommendations:

- 1) The RCC recommends the new home be moved closer to LaMer Drive to minimize the footprint in the 100 foot tidal buffer zone.
- 2) The propane tank should be located outside the tidal buffer and not in the alternate location that is 40 feet from the marsh.
- 3) There should be minimal disturbance and fill on the side of the house and driveway nearest the marsh.
- 4) The 325 foot border along the marsh and stone wall should be planted to a depth of 20 feet with native plantings to aid in filtering possible contaminants before they enter the marsh.

Sincerely,

Francis P. (Mike) Garvan II, Clerk

NH DES native plantings list

http://www.des.nh.gov/organization/commissioner/pip/publications/wd/documents/vrap_native_plantings.pdf

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:

July 5, 2017

Decision:

The Board unanimously voted to approve the applicant's request for a Variances from Section 203.3A for a shed 10' from the rear property line and from Section 203.3B for shed 10' from the side property line with the following conditions per the DPW Director's December 12, 2016 letter.

1. The shed construction shall not impede any drainage within the easement area or entering the drainage area from abutting properties.
2. Should future construction be contemplated by the Town, within the drainage easement area, the shed will be removed from the easement, at no cost to the Town of Rye.



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.



TOWN OF RYE
DEPARTMENT OF PUBLIC WORKS
10 Central Road
Rye, N.H. 03870-2522
603-964-5300 • Fax 603-964-9708

December 13, 2016

Stephen Carter
620 Wallis Road
Rye, NH 03870

Re: Shed Construction in Drainage Easement
#620 Wallis Road
Tax Map 16; Lot No 104.
Rye, New Hampshire

Dear Mr. Carter:

Your proposal to construct a 10' X 12 Shed in the south west corner of your property, within the drainage easement is acceptable to the Public Works Department, predicated on compliance with the following conditions.

- 1) Shed construction to compliance with all town building and land use ordinances.
- 2) All permits whether local or otherwise, shall be obtained for the subject shed construct.
- 3) The shed construction shall not impede any drainage within the easement area or entering the drainage area from abutting properties.
- 4) Should future construction be contemplated by the Town, within the drainage easement area, the shed will be removed from the easement, at no cost to the Town of Rye.

Should you any questions or comments pertaining to this matter please do not hesitate to contact me.

Sincerely;
TOWN OF RYE, NH

Dennis G. McCarthy
Public Works Director

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Andrew Foss

Property:

780 Ocean Blvd, Tax Map 23.1, Lot 29-16
Property is in the Business, Coastal Overlay District
SFHZ, AO Elv. 1"

Application case:

Case # 22-2017

Date of decision:

July 5, 2017

Decision:

The Board unanimously voted to approve the applicant's request for a
Variances from Section 210.3 A to construct a solar array 1' from the rear
property line.


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

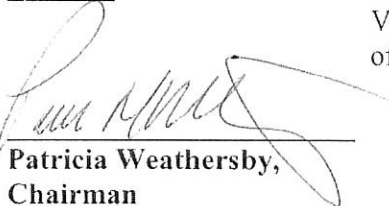
Applicant/Owner: James Freiburger of 24 String Bridge Street, S-8, Exeter NH

Property: 784 Ocean Blvd, Tax Map 23.1, Lot 29-11
Property is in the Business, Coastal Overlay District
SFHZ, AO Elv. 1"

Application case: Case # 23-2017

Date of decision: July 5, 2017

Decision: The Board unanimously voted to approve the applicant's request for a
Variances from Section 210.3 A for a deck replacement with the addition
of a 16" x 10' bench 25' from the rear property line.


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:

Richard F. Carey on behalf Theresa Carey & Richard Carey Revocable Trust, Theresa Carey & Richard Carey Trustees of 11 Robandy Road, Andover, MA

Property:

11 Surf Lane, Tax Map 8.4, Lot 71
Property is in the General Residence and Coastal Overlay District

Application case:

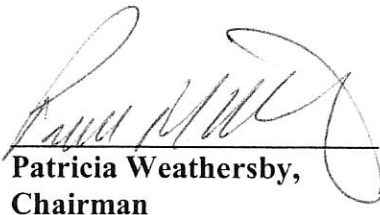
Case # 21-2017

Date of decision:

July 5, 2017

Decision:

The Board unanimously voted to continue the applicant's request Variances from Section 603.1 for expansion of a non-conforming building; Section 204.3C for addition of second floor 11' +/- within the front boundary where 13' exists and 22.2' is required; from Section 204.3 C for an outdoor shower within the 22.2' Breakers Road front boundary; from Section 204.3B for addition within the side boundary 8.6' where 8.6' exists and 20' is required; from Section 304.5 for building coverage of 19.1% where 16.8% exists and 15% is allowed; from Section 500.2 for two (2) parking spaces where none exist and from Section 500.3 for the location of the parking spaces located within the front yard to the August 2, 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

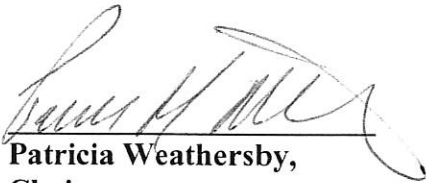
Applicant/Owner: Glenn Walker & Elizabeth Fairchild

Property: 531 Brackett Road, Tax Map 17, Lot 47
Property is in the Single General Residence District

Application case: Case # 20-2017

Date of decision: July 5, 2017

Decision: The Board unanimously voted to continue the applicant's request for a Variances from Section 510.3 to allow for an 8ft fence where 6ft is allowed to the August 2, 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:

Dan & Diane Conway

Property:

2 West Road, Tax Map 7, Lot 37
Property is in the Single Residence District

Application case:

Case # 25-2017

Date of decision:

July 5, 2017

Decision:

The Board unanimously voted to continue the applicant's request from Section 203.3 C for a porch within the front property boundary where 28' exists, 30' is proposed and 40' is required to the August 2, 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.

June 7, 2017

Catherine & Charlie Raynes
1 Guzzi Drive
Rye, NH 03870

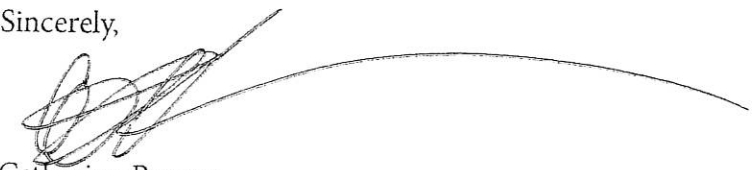
To: Town of Rye Zoning Board of Adjustment
From: Neighbors located at 1 Guzzi Drive, behind Carmen & Katherine Place's home
Regarding: Carmen & Katherine Place's request for variance

Dear Rye Zoning Board of Adjustment,

I am writing to lend our full support of Carmen and Katherine Place's request to the Rye zoning board regarding their property located at 11 Fairhill Ave., Tax Map 20.2 lot 96. I have studied the floor plan, elevation and septic/land map for the structure and septic and find the Place's request for the variances reasonable in terms of both function and aesthetics and are delighted to see such a wonderful addition to the neighborhood.

We urge the town of Rye to vote in favor of granting the Place's their variances.

Sincerely,



Catherine Raynes

Date: 6/1/2017

To: Town of Rye-Zoning Board of Adjustment
From: Neighbors located at 931 Ocean Blvd facing the Place's home
Regarding: Carman & Katherine Place request for. Variance

Dear Rye Zoning Board of Adjustment,

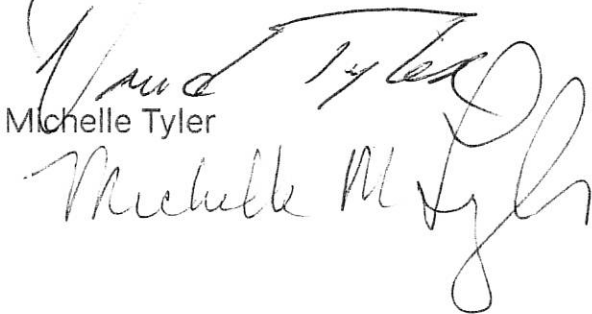
I am writing to lend my full support to Carmen and Katherine Place's request to the Rye zoning board regarding their property located at 11 Fairhill Ave. Tax Map 20.2 lot 96. I have studied the floor plan and elevations for the new structure and find the Place's request for the variance reasonable in both terms of function and aesthetics and delighted to see such a handsome addition on our street.

We urge that the town of Rye vote in favor of granting the Place's the variance.

Sincerely,
David and Michelle Tyler

David Tyler

Michelle Tyler

The block contains two handwritten signatures. The first signature, for David Tyler, is written in dark ink and is positioned above the printed name 'David Tyler'. The second signature, for Michelle Tyler, is also in dark ink and is positioned above the printed name 'Michelle Tyler'. Both signatures are cursive and stylized.

Attachments
7-5-17



**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 cursive script, appearing to read "Mike Garvan".

Francis P. (Mike) Garvan II, Clerk