

**TOWN OF RYE – BOARD OF ADJUSTMENT**  
**Wednesday, August 2, 2017**  
**7:00 p.m.**  
**Rye Town Hall**

***Members Present: Acting Chair Shawn Crapo, Burt Dibble, Patrick Driscoll, Tim Durkin and Russ Bookholz***

***Others Present: Planning/Zoning Administrator Kimberly Reed***

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

Acting Chair Crapo called the meeting to order at 7:04 p.m. and led the Pledge of Allegiance.

**Motion by Patrick Driscoll to continue the applications of Karl and Andrea Swanson to the September meeting. Seconded by Burt Dibble. All in favor.**

**II. Approval of Minutes:**

- **July 5, 2017**

**Motion by Burt Dibble to approve the minutes of July 5, 2017 as amended. Seconded by Russ Bookholz. All in favor.**

**III. Applications:**

- **Petition by Hoefle, Phoenix, Gormley & Roberts, PA on behalf of Manuel Barba for a Rehearing and Reconsideration of the Rye Board of Adjustment's June 7, 2017 denial of Mr. Barba's Administrative Appeal request for the property located at 740 Washington Road, Tax Map 11, Lot 103, Case #04-2017. Public hearing closed during Board discussion on the request.**

Acting Chair Crapo explained that the Board should keep in mind the standard for granting a rehearing that the Board would find, by majority vote, that there was either a mistake of law that warrants a rehearing or there is information that comes to light that may have altered the outcome of the meeting such that a rehearing would be warranted.

Member Driscoll stated that the Board had the benefit of going through creating a Notice of Decision after the June meeting. In reading through all the information, he does not see there was any error in the Board's decision or in how they came to that decision.

Member Durkin stated that he is confused. It would be beneficial for Attorney Phoenix to provide the Board with an explanation.

Acting Chair Crapo commented that this is Attorney Keizer's case. All that is in front of the Board this evening is the submittal. The Board is limited to the submittal.

Member Durkin asked if the Board is permitted to ask counsel to further explain the reasons.

Acting Chair Crapo replied no. The Board can go through the submittal item by item and discuss the argument made in the document. Other outside input is curtailed.

Member Durkin asked if the town's attorney reviewed the request.

Acting Chair Crapo commented not to his knowledge. He continued that in a rehearing request the advocating party is going to point and argue why they see deficiencies. It is the Board's job to determine if they agree with the applicant's logic and reasoning or does it not meet the standard where it is felt that an error was made.

Member Durkin stated that he is struggling a little bit with the process. To him, it would be beneficial for the Board to have the applicant's counsel further explain this.

Acting Chair Crapo pointed out that the Board could decide to continue this to consult with outside counsel; however, an action has to be taken on this within thirty (30) days of submittal.

Member Driscoll stated that his understanding of this is to confirm that after hearing all the information as a Board they correctly came to the conclusion that they did and the conclusion conforms to the zoning ordinance.

Member Dibble stated that they are being asked to see if the Board overlooked or misjudged something.

Speaking to Member Durkin, Acting Chair Crapo asked if he is wondering if the applicant's argument for a rehearing is sound or are the thoughts that the Board should get back into the merits of the case?

Member Durkin stated that he is looking at it from a legal standpoint.

Acting Chair Crapo stated that it needs to be determined if the Board feels that in the process of making their decision, which in this case was a denial, if an error was made along the way. If the Board granted a rehearing, it sets it back to the beginning, which could or could not come up with the same results. If someone felt that there was a mistake in reviewing the merits than they would vote for a rehearing. If there is a question about whether their argument is sound legal judgement, that is what the Board is to make a decision on. If the Board felt strongly enough, it could be continued to consult with legal counsel on that matter but this would not be a rehearing. It would be a way for the Board to get past a "snafu" in this process.

Member Dibble stated that in reviewing the arguments made for the rehearing, he does not think there was anything that was stated that was not already considered at the hearing. He is not inclined to feel there needs to be a rehearing.

Member Bookholz stated that he did not sit on the case but has been reading through the case for a few days. He continued that he thinks the Board erred because of how long this has been a residence and other building inspectors stating that the use could continue. Now all of a sudden, it has come up that it cannot be continued. He does not think the decision was made properly if it was a residence for all those years. He understands it needs a proper septic system to remain a residence but that was applied for and granted by the State to install that system.

Acting Chair Crapo explained that the proposal from the applicant was to put in that State approved system but they wanted a delay while they still had tenants using the open cesspool before it was installed. That was the proposal that was voted on.

Speaking to Member Bookholz, Member Driscoll stated that he understands his thoughts. This was his question procedurally. It is a lot easier for him to look at this and look at the minutes with the recollection of actually sitting on the case and being there through the process. He thinks that procedurally the Board did everything right. If he was solely relying on the submittal, he would probably be in the same place as Member Bookholz without sitting on the case I would have been conservative and would take that approach as well.

Member Bookholz commented that maybe he should abstain from voting where he did not sit on the case.

Acting Chair Crapo asked if he had a chance to fully read through the minutes.

Member Bookholz confirmed.

Speaking to Member Bookholz, Acting Chair Crapo stated that he will let him make the call on whether he would like to vote. However, if the minutes were read, procedurally he can vote on the item.

Acting Chair Crapo continued that he was present for all versions of the matter. As it was proposed, as it was discussed, and as it moved forward, he does not feel the Board made an error. There were different interpretations of things over the years that make a unique situation for the property but as proposed, structurally, timeline, etc., he feels the Board came to a sound decision.

Member Driscoll agreed.

Acting Chair Crapo asked the Board to vote on whether they feel there was an error of law necessitating a rehearing. He explained that in order to grant a rehearing there needs to have been in error or new information has come to light that would cause a rehearing.

**Motion by Patrick Driscoll to deny the request for rehearing from Manuel Barba.**

**Seconded by Burt Dibble.**

**Vote: 4-0-1 Abstained: Russ Bookholz**

1. **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**

**Elizabeth Fairchild, 531 Brackett Road**, presented to the Board. She explained that they are requesting a variance for an 8ft fence, where 6ft is allowed. The fence would run along the property line at the rear of the property. The property abuts a property owned by the Ritters. The Ritter property is maintained as a rental property. There is a stock pile of construction debris that they would like to block from sight and enjoy the backyard.

Acting Chair Crapo asked what would be the closest point to the travelled road that the fence would start.

**Glenn Walker, 531 Brackett Road**, explained it would be about 100ft back.

Acting Chair Crapo asked if there would be blockage of the road for people driving.

Ms. Fairchild replied no.

Acting Chair Crapo asked if the fence would be 1ft from the property line.

Mr. Walker replied yes. There has been no dispute with the abutter over where the fence would go.

Member Dibble asked the reason for needing 8ft more than 6ft.

Mr. Walker stated that someone in the house, depending on where they are, can see over a 6ft fence. He pointed out that his property is elevated.

Acting Chair Crapo read a letter from Wayne Ritter, abutter, dated May 11, 2017, noting that there are no objections to the installation of the 8ft fence along the rear property line.

Member Driscoll asked if there would be a gate.

Mr. Walker replied no.

Acting Chair Crapo opened to the public for comments or questions. Hearing none, he closed the public session at 7:31 p.m.

The Board did not have any concerns with the proposal.



Acting Chair Crapo called for a vote on request for variance to Section 510.3:

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

**3. Substantial justice is done?**

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - 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?**

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

**Motion by Burt Dibble to approve the request for a variance from Glenn Walker & Elizabeth Fairchild for property owned and located at 531 Brackett Road to Section 510.3 to allow for an 8ft fence where 6ft is allowed. Seconded by Tim Durkin. All in favor.**

- 2. Richard F. Carey on behalf Theresa Carey & Richard Carey Revocable Trust, Theresa Carey & Richard Carey Trustees of 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 204.3 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. **Property is in the General and Coastal Overlay Districts. Case #21-2017.****

**Richard Carey, applicant,** stated that he and his wife have been summer residents of 11 Surf Lane for 21 years. They have aspirations to make some improvements with a modest increase in lot coverage to make it a year-round home. (He presented the architect's drawings showing what the house will look like.) He continued that it is a small cape. The rear of the house would bump out 6ft and go from 51ft to 45ft from the property line. He pointed out that they are not requesting anything from the side property lines. The request is for a 6ft increase of the foundation. He continued that there is a significant problem with the foundation in the northeast corner. The family room, at one point, was an addition to the house built by the owner at that time. The owner basically quit digging the foundation in the northeast corner because of tree roots. The room is sitting on a block foundation maybe 18 inches below the ground. The family room floor sags significantly. He noted they are aspiring to fix this issue and want to do it in context with the renovation. He continued that they are also proposing to build another room above the family room. The room will be a multi-purpose room with another bathroom. He stated that there is a screened porch that runs the entire 25ft width of the house in the rear. The proposal is to knock down the family room and rebuild the room, extending it out 6ft, with a screened three season porch. He noted that the stairs to the left will go to the room above, which will be an office/sitting room. (He reviewed the architect drawings for the Board.)

Member Durkin asked for the height.

Mr. Carey replied 27.9ft. The existing height is 20.5ft.

Acting Chair Crapo asked if this was verified with the Building Inspector to make sure the measurements are taken from the right place.

Mr. Carey stated that he has spoke with the Building Inspector. He understands that the ordinance is the average grade across the length of the foundation. It is a fairly flat lot. He noted that the measurement was done with the architect.

Acting chair Crapo stated that the Board has received the request to change the screened porch to a three-season room with casement windows. He asked if this change has been run by the Building Inspector. He asked if other variances would be needed.

Member Bookholz pointed out the footprint stays the same.

Member Driscoll asked if there is heating.

Mr. Carey replied that right now there is not heating. There will be heat in the room adjacent to it.

**Attorney Thomas Keene, representing the applicants,** stated that he does not know of any reason why there would be a need for additional variances.

Member Bookholz stated that right now it is proposed to be a three-season room. If there is heat in there it will become a four-season room.

Acting Chair Crapo stated that it could potentially become more than a porch. He continued that he would feel comfortable going forward if one of the conditions would be that the Building Inspector will review to make sure no additional variances are needed.

Member Dibble stated that he occupies a house with a room like this with windows on three sides and a door to the house. There is no way to open the door to the house in the dead of the winter and heat the room. This looks like it is very much a three-season room.

Acting Chair Crapo explained that procedurally one thing was applied for, reviewed and issued a denial letter. A requested change was then made. He continued this could be continued to wait for a ruling or it can be moved forward with a condition that if it needs no change then it is harmless.

Attorney Keane stated that they will get confirmation from the Building Inspector that no additional variances are needed.

Member Driscoll stated that he is okay with moving forward and hearing the case. However, he does feel it puts the Board at a little disadvantage as they did not have a sense of what was proposed in the packet.

Member Durkin asked what the rear setback requirement is.

Acting Chair Crapo pointed out that the lot being on a corner has two front setbacks.

Attorney Keane noted that there are two sides and two fronts on a corner lot.

Member Dibble stated that it appears that because there is no increase to the footprint, the size of the proposal is a grandfathered use.

Acting Chair Crapo explained that if it was torn down it could be built exactly as it is now. Other than that, it is not grandfathered. Expanding or modifying anything within the setbacks is not grandfathered.

Member Durkin commented it is not on the existing footprint because it is being bumped out further.

Attorney Keane explained it is being bumped out. The expansion will be 11, plus or minus feet, where 13.2 exists. There would be approximately a 2ft addition on the front yard setback. On the side setback, 8.6ft is proposed where 20ft is required and 8.6ft exists.

Acting Chair Crapo asked if they are tearing down what is there.

Mr. Carey replied that 20% of the house is being torn down. The addition on the back of the house is coming down, along with the screened porch. The plan is to rebuild the foundation, extending it out 6ft to the back.

Member Bookholz asked if the plan is to put the driveway at the front of the house.

Attorney Keane explained there is no parking at the present time. That is why the Building Inspector suggested a variance for parking. The front is where they are proposing to put a parking area for two cars.

Mr. Carey explained there will be parking pavers to the right side of the front walkway; however, this has not yet been submitted.

Member Driscoll commented that if this is part of the application the Board has to see where the parking will be located.

Mr. Carey pointed out that this is something that the Building Inspector requested.

Acting Chair Crapo stated this is part of the variances being requested. There is a request for a variance for two parking spaces and a second request for the location to be in the front yard. He continued that this needs to be proposed to the Building Inspector and shown on the plans. At this point, there is a change in the porch and now this. He is thinking this may need to be continued to have the Building Inspector review the plan and have it come back altogether.

Member Durkin asked where they were thinking of locating the parking.

Mr. Carey replied that his thought was on the right side of the walkway, when looking at the house from Surf Lane. He noted that they currently park two cars with plenty of space on the grass. To put pavers there would be very easy.

Attorney Keane commented that the change in the porch is not really a change. It is just a change in the windows.

Acting Chair Crapo stated that he is not sure. Based on interpretation, it could change the nature of that space and lot coverage. A porch is one thing. An enclosed room is a different piece.

Attorney Keane stated that the applicant is representing that the room will not be heated. It will essentially remain a three-season porch.

Referring to the change in the three-season porch, Acting Chair Crapo stated that he was willing to go forward with that alone. There is a request for 500.3 for the parking location to be in the front yard. Section 500.3 is "no off-street parking located within required front yard area nor within 10ft of any lot line in any district". There is no way that two cars are fitting to the right of the walkway without being within 10ft, as well as being in the front yard.

Mr. Carey stated that he has plenty of room on the Breakers Road side to put pavers.

Member Bookholz stated that approval is needed from DPW.

Mr. Carey asked if it would be acceptable to the Board to approve it based on the Building Inspector's review of the parking and the rear room.

Member Durkin asked if this can be heard without the parking request. Could the applicant come back on that?

Attorney Keane stated that his understanding was that a variance was needed from the ordinance that required parking spaces. Section 500.2 requires that a single family dwelling have two parking spaces. There are no parking spaces so a variance is needed from that. The purpose of his memo was to allow for a variance from the requirement to have parking spaces located on the property because there are none located there now.

Member Driscoll clarified that they would like the case heard but part of the application is that there is not going to be parking on the property.

Attorney Keane explained that there has never been parking spaces on the lot. When the proposal was presented to the Building Inspector, he said that a variance was needed from the section that requires two parking spaces. The Building Inspector also said that if the applicant wants to put in pavers for parking at a later date, that will have to be considered at that time.

Acting Chair Crapo clarified that the pavers are off the table at this time.

Attorney Keane confirmed.

Member Driscoll asked the square footage of the current house.

Mr. Carey replied 1500sf.

Member Driscoll asked how many bedrooms are in the house.

Mr. Carey replied three.

Member Driscoll asked what is being proposed.

Mr. Carey replied an additional 600sf. There will be three bedrooms. The room upstairs will be a room with a pull-out couch.

Member Driscoll stated that a larger house could potentially have more people living in the house. He explained the Board has to look at the house and property itself as compared to the application. If right now, the property has been grandfathered into not having parking spaces, then the Board cannot do anything about it. Now a variance is being requested to build a larger house on that property. He is not in favor of the proposal without knowing where the cars are going to go. There is more lot encroachment, more square footage in the house and more building area square footage.



Attorney Keane stated that when the applicant went through the plans with the Building Inspector, there was no parking on the plans because there is no parking there today. There is a 6ft bump in the house resulting in approximately 140sf of additional lot coverage. The Building Inspector looked at the plan and said he was going to deny the application because a variance is needed for the required parking. The parking is now in the street and that is not changing. A variance is also needed for the setbacks because it is expanding out just a little bit further. This is exactly what the applicant applied for. If Mr. Carey decides to put in parking, he will have to come back for a variance but right now it is not a requirement of the Building Inspector to apply for a building permit.

Acting Chair Crapo stated that if the request was granted the Building Inspector cannot say that parking is required because the relief would have been granted. If the applicant decided to put in a driveway, the location may be a separate issue. He reiterated that if the relief is granted it is saying that there is no longer a requirement for the two spaces on this property and there is no longer a restriction from parking in the front yard or within 10ft.

Member Driscoll clarified that if the request is not granted than the applicant has to conform to the ordinance.

Acting Chair Crapo confirmed. He would not be able to get an occupancy permit because he would be in violation of parking. He commented that he thought the Board was going to be looking at the location of pavers.

Attorney Keane reviewed the criteria for granting the variances.

Acting Chair Crapo asked why it is reasonable to increase the lot coverage when the property is located in an area that is hugely sensitive to water and runoff.

Attorney Keane stated that in that area there have been numerous houses that have been renovated and expanded. Generally speaking, the Building Inspector is going to require a drainage plan when the applicant goes for the building permit. That is not something they need a variance from. It is something that the Building Inspector will take into consideration.

Acting Chair Crapo pointed out that they are requesting a variance from the lot coverage.

Attorney Keane stated that the Building Inspector implements drainage into his approval. He continued that this is very modest. The expansion is only going out 6ft in the back.

Member Durkin asked if the plans have been shown to the neighbors, especially, the abutters on Breakers.

Mr. Carey stated that he has shown the plan to all his abutters and they are all in favor.

Member Driscoll asked for the letters of support to be given to the Planning Administrator for the record.

Mr. Carey agreed to email the letters to Mrs. Reed.

Acting Chair Crapo opened to the public.

**Steve Winslow, 12 Surf Lane**, stated that he and his wife live directly across the street. They have known the Careys for over 20 years. They fully support the proposal. Mr. Carey has shown everyone who abuts the property the plans. Everyone is aware of the plan. It is a fairly close-knit neighborhood and most people have been there a long time. The neighbors talk with one another and everyone is on board.

Member Driscoll asked if the neighbor could look at the plans and confirm that these plans are the ones that they were shown.

Mr. Winslow reviewed the plan. He confirmed that the plan was the plan that he was shown by Mr. Carey.

Hearing no further comments or questions, Acting Chair Crapo closed the public hearing at 8:15 p.m.

Member Dibble stated that he thinks they should request an as built to make sure it stays under 28ft. He is sensitive to the water drainage issue but the drainage is downhill along Breakers and there is 51ft in the back. Even though 6ft has been taken away, he thinks 51ft is still enough to absorb any water that might runoff the roof from the structure. He is not at all concerned about the drainage issue. He continued it is a very tight neighborhood but heading down Breakers it is not so tight because of this 51ft setback in the rear. If the property is going to be expanded to the benefit of the owners, that would be the direction to do it. He thinks this is something relatively in favor and not in opposition to the project. He is convinced by the testimony of the people who attended the meeting that the abutters are in favor of this project. He continued that a lot of the houses in this area were built before parking requirements and people parked where they could. He is comfortable for the time being knowing that the neighbors who are most exposed to the parking are in favor of the project. If they want to do something for a driveway in the formal sense in the future they can come back in for a discussion at that time.

Acting Chair Crapo stated that the Building Inspector's standard letter says there has to be an as built. He also stated a stormwater drainage plan is required per RZO Section 507 before a permit will be issued.

Member Durkin stated that given the amount of space in the rear the plan seems reasonable. The lot coverage is only increasing from 16.8% to 19.1%. The Board has seen other proposals with a significant increase. He thinks the applicant was sensitive to not overbuild.

Member Bookholz stated it is a reasonable request. The addition is minimal to others they have seen in the area.

Member Driscoll stated that he likes that they have not encroached any further on the Surf Lane side. They haven't tried to encroach further into Breakers Road, which has been a problem in

that neighborhood before. Clearly there are some building deficiencies that need to be addressed. They might as well make the house what they want it to be within reason. He thinks they have done a good job on that. He thinks procedurally, when the Board tries to hear cases that do not have plans and don't have anything from the abutters that are in favor, is a dangerous spot. However, the abutter that is present has been his neighbor for 20 years, it is a tight-knit community and the zoning sign has been posted on the property. He is okay with it but he is uneasy about the incomplete package.

Acting Chair Crapo commented that he is fine with moving forward. He would like to see a condition that the change of the three-season room is run by the Building Inspector. As long as it does not change the nature of the review than it is all set.

Member Bookholz stated that Section 500.3 says "for the location of parking spaces within the front yard".

Acting Chair Crapo commented they are requesting that this provision does not apply.

Member Bookholz stated that it would be granting them permission to locate parking spaces in the front yard if Section 500.3 is granted.

Acting Chair Crapo stated that 500.3 says they cannot park within 10ft of the lot line nor in the front yard. They are requesting relief from that. If the Board was to grant relief from that then they can park there.

Member Bookholz stated that the way it reads they are asking for parking spaces located on the front lawn.

Member Durkin commented they are asking for the ability to park two vehicles on the property.

Acting Chair Crapo explained that if they made no request and the entire rest of the relief was done, when they asked for a certificate of occupancy from the Building Inspector he would have to say no because they are required to have two parking spots and they don't. Those parking spots cannot be on the front lawn and since there is no parking the building cannot be used. Section 500.2, is asking for relief from two parking spaces where none exist. Section 500.2 says that in order to have a home, two off street parking spaces are required. The applicant is saying to not have that apply to their property. Section 500.3 says that they cannot park on the front lawn and within 10ft of the property line. By granting relief from that, the Board would be saying that they can pull up on the front lawn and park.

It was agreed to separate the vote on 500.2 and 500.3 from the other variances.

Acting Chair Crapo called for a vote to Sections 603.1, 204.3 C, 204.3 B and 304.5:

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

**3. Substantial justice is done?**

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

**Motion by Burt Dibble to approve the request of Richard F. Carey on behalf Theresa Carey & Richard Carey Revocable Trust, for property owned and located at 11 Surf Lane, for relief from Sections 603.1 Section 204.3C 204.3B and 304.5, conditioned on the review of the three-season room by the Building Inspector. Seconded by Patrick Driscoll. All in favor.**

Acting Chair Crapo stated that they will discuss the request for Section 500.2 requiring two off street parking spaces per zoning.

Member Dibble stated that a lot of the lots were established before there was zoning. Zoning comes along and requires two parking spaces and setbacks. This is a property that was never reviewed with those things in mind. The opportunity for the owners to use their property is conditioned on a variance from those requirements. He thinks the variance should be granted. If the applicant wants to do something more permanent they will be back.

Acting Chair Crapo stated that part of what Member Bookholz is getting at may be a potential condition. The applicant has said that if they were to park in the front yard it would be to the

right side of the walkway. He commented that he is thinking of a potential condition that there be no parking to the left of the walkway. (He opened to Attorney Keane and the applicant.)

Mr. Carey stated that he has no problem with that.

Acting Chair Crapo asked if there is no parking on the street.

Mr. Carey stated that both sides are posted "no parking". The cars have to be on the grass or they will get a ticket.

Member Bookholz commented that they have to have a driveway.

Acting Chair Crapo explained that the requested relief is to not have that enforced.

Member Driscoll stated that they should show where they are planning to park the two vehicles so the Board can make sure it is safe for sight lines and everything else.

Mr. Carey stated that they never park on the corners of the lot. The car is sometimes parked on the Breakers side of the walkway but it is always right in front of the house. Ideally, the cars are parked to the right of the walkway. He pointed out that sometimes he parks way off Breakers next to his shed, which is also a feasible place to put pavers.

Acting Chair Crapo commented that 500.3 could be conditioned for the parking to only be in certain areas of the lot.

Member Bookholz stated that it should be conditioned on them applying for a driveway permit.

Attorney Keane stated that he does not think this can be done because the plan that was submitted to the Building Inspector did not have any parking spaces on it. The Building Inspector evaluated the plan and said these are the variances needed in order to have the plan approved.

Member Durkin noted that at some point the applicant is going to have to come back if they are going to live there year round.

Attorney Keane pointed out that if they wanted to put in parking spaces they would have to come back.

Member Driscoll stated that the applicant has said that there are two areas where he parks his vehicles. They seem to be reasonable from what he is explaining. If those two spots are shown on the plans, even if they are in the setback, (and it does not have to be a paved area), it would allow the Board to say that relief is not needed from 500.2 because there are two parking spaces and what is needed is relief from 500.3 for the location of the parking spaces because they would be within the setback.



Attorney Keane stated that the problem with that analysis is that without the parking spaces being shown on the plan the Building Inspector will not grant them a building permit. Relief is needed from having parking spaces in accordance with 500.2. The other aspect is that they need relief from 500.3 to park in the front yard. He continued that the solution would be to grant them relief from 500.2 because the parking is not on the plan. It can be said that a variance was granted from having to show two parking spaces shown on the plan. The variance to 500.3 can be conditioned to parking on the right side of the walkway.

Member Driscoll asked why relief would be needed for 500.3 if relief was granted for 500.2

Acting Chair Crapo explained that they would still be violating 500.3. If they parked within 10ft of the property line or within the front yard, they would be in violation of zoning.

There was further discussion on the location of the parking.

Acting Chair Crapo called for a vote to Section 500.2:

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

Tim Durkin – Yes  
Patrick Driscoll – No  
Russ Bookholz – No  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – No  
Russ Bookholz – No  
Burt Dibble – Yes  
Shawn Crapo - Yes

**3. Substantial justice is done?**

Tim Durkin – Yes  
Patrick Driscoll – No  
Russ Bookholz – No  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – No  
Russ Bookholz – No  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – No  
Russ Bookholz – No  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – No  
Russ Bookholz – No  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – No  
Russ Bookholz – No  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – No  
Russ Bookholz – No  
Burt Dibble – Yes  
Shawn Crapo - Yes

**Motion by Burt Dibble to approve the variance request of Richard F. Carey for property owned and located at 11 Surf Lane for relief from Section 500.2. Seconded by Tim Durkin. Vote: 3-2-0 Opposed: Patrick Driscoll and Russ Bookholz**

Acting Chair Crapo called for a vote to Section 500.3:

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

Tim Durkin – Yes  
Patrick Driscoll – No  
Russ Bookholz – No  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – No  
Russ Bookholz – No  
Burt Dibble – Yes  
Shawn Crapo - Yes

**3. Substantial justice is done?**

Tim Durkin – Yes  
Patrick Driscoll – No  
Russ Bookholz – No  
Burt Dibble – Yes  
Shawn Crapo – Yes

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

Tim Durkin – Yes  
Patrick Driscoll – No  
Russ Bookholz – No  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – No  
Russ Bookholz – No  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – No  
Russ Bookholz – No  
Burt Dibble – Yes  
Shawn Crapo – Yes

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

Tim Durkin – Yes  
Patrick Driscoll – No  
Russ Bookholz – No  
Burt Dibble – Yes  
Shawn Crapo – Yes

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

Tim Durkin – Yes  
Patrick Driscoll – No  
Russ Bookholz – No  
Burt Dibble – Yes  
Shawn Crapo - Yes

**Motion by Burt Dibble to approve the variance request of Richard F. Carey for property owned and located at 11 Surf Lane for relief from Section 500.3 with the condition that parking be confined to the right side of the central front walk and the Breakers side of the property and not within 10ft of the corner. Seconded by Tim Durkin.**

**Vote: 3-2-0 Opposed: Patrick Driscoll and Russ Bookholz**

**3. Dan & Diane Conway for property owned and located at 2 West Road, Tax Map 7, Lot 37 request a Variance from Section 203.3 C 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**

- **No one present to represent the applicant.**

Acting Chair Crapo noted that Attorney Donovan has stated that the applicant has the burden of proof. If they do not show for the hearing, they have not met the burden of proof and the application could be denied. Upon denial, the applicant could be granted a rehearing with a reasonable explanation for the no show. Attorney Donovan's suggestion is to continue it at least once.

**Motion by Tim Durkin to continue the application of Dan and Diane Conway. Seconded by Patrick Driscoll. All in favor.**

4. **Thomas J. Aspinwall for property owned and located at 236 Sagamore Road, Tax Map 22, Lot 53** requests a Variance from Section 203.1 to allow a pest control business office with materials, equipment and vehicle storage within the existing barn on the property. **Property is in the Single Residence District. Case # 24-2017**

**Attorney Kevin Baum, representing the applicant,** spoke to the Board. He noted that he has received a letter from one of the abutters in support, which he would like to submit as part of the record. He continued that they are seeking relief from Section 203.1 to allow use of the property for Mr. Aspinwall's pest control business. Mr. Aspinwall is the owner of the property and he is also the president of GFC Pest Management. Mr. Aspinwall has been operating GFC on the property since 1989. He was doing so with the understanding that it was a permitted use, in part based on correspondence with past building inspector, Susan Zarlengo in 2001. Ms. Zarlengo had contacted him to raise concerns about the use. The response was that the relief was a permitted home occupation. He noted that the correspondence is in the packets. He continued that Ms. Zarlengo had questions and at the end of the correspondence it was the understanding that it was permitted, until this past winter when a notice was received from the current building inspector, Peter Rowell, stating that he did not think it was a permitted use. This was brought about from a complaint from one of the neighbors who was concerned. The neighbor has since sold her house and has moved away. He stated that they do not necessarily agree with Mr. Rowell's decision but can see that it is not a perfect fit as a home occupation. It was decided that the cleanest way to get permission to continue the long-standing use and to eliminate any issues is to come before the Board for zoning relief.

Attorney Baum noted that the property is 2.71 acres. The single-family residence was constructed around 1812. There is also a very large barn on the property that was constructed in the 50's or 60's. That barn is currently where the business is operated. It is used as an office for Mr. Aspinwall and a part-time clerical staff person. It is also used to store materials and equipment for the business. Approximately 1300sf is used for business of the total 2692sf of the barn. The rest of the barn is used for personal use. The property was originally used as a brothel in 1812. He noted that the barn was used as a truck painting facility in the past, as well as an antique bookshop. Since 1989, it has continuously been used by Mr. Aspinwall for GFC. He continued that all materials and equipment is stored in a locked store room, which is contained within the barn. Mr. Aspinwall also has four pickup trucks that are mixed business and personal use. Two are used by technicians that pick up the trucks and go to jobs off the property each day. One of the trucks is used by his son who works part time for the business as well. The trucks are not always on the property but at times they may be. He continued there are a number of trailers that are used primarily for personal recreation use. There is a trailer that is used for large off-site jobs for the business. Other than the lettering and magnetic signs, there is no logo for the business. If someone was to go by the property they would see the barn. There is no signage for the business and there is no inclination that the business is operating there.

Attorney Baum reiterated that there are pesticides locked in the store room within the barn. That is fully regulated by the N.H. Department of Agriculture, Markets and Food. They have inspected the property and Mr. Aspinwall has only gotten positive inspections. The pesticides that are there are all general use pesticides. These are the same type of pesticides that could be purchased at a Hardware Store. They are not restricted use pesticides that can only be applied by a licensed professional. With that said, Mr. Aspinwall is a licensed professional, as well as all the technicians that work for him. They are regulated by the State and are required to meet all the health and safety standards. He stated that the property has been used as a pest control business for 28 years. The request is to just continue that use in the manor that Mr. Aspinwall believed he was legally doing.

Attorney Baum stated that they have proposed some conditions to alleviate any concerns about change of use. The conditions are (1) use be limited to the owner of the property or any company controlled by the owner; (2) no restricted use pesticides maintained on the property; and (3) the company will remain registered and in good standing with the Department of Agriculture, as long as it is used as a pest control business.

Acting Chair Crapo asked if Mr. Aspinwall is being referred to as "the owner".

Attorney Baum explained that the full expectation is that if this business is operating on this property it is going to be operated by Mr. Aspinwall or maybe one of his sons. The use runs with the land and this is being put in to alleviate any concern that it is going to turn into a business that does not entirely fit with the home occupation criteria.

Acting Chair Crapo clarified that it is being proposed that it runs with the land, as long as the owner is a licensed pest control specialist.

Attorney Baum confirmed.

Acting Chair Crapo clarified that it would not be restricted to Mr. Aspinwall.

Attorney Baum explained that he is not sure this could legally be done. (He reviewed the criteria for granting the variance.) He stated that as the Board makes their decision they should recognize that this is subject to RSA 430:49, which preempts local pesticide control regulations. The town can regulate business use but under this statute they cannot propose greater restrictions simply based on the pesticides. They are asking the Board to grant the long-standing use of the property for a pest control business with materials and equipment storage in the existing barn, subject to the conditions put in the application. (He read from RSA 430:49.) He stated that the Board needs to look at this application through the lens of the statute by the legislature that clearly did not want specific targeted local regulations of pesticides. He does not think it is proper for the Board to say that it meets all the criteria and is an acceptable business use except for the sole reason of pesticides. The Board can restrict business use in a residential zone and that is what they are asking for relief from. This should not be treated with any more prejudice than any other business use.



Acting Chair Crapo stated that the statute has nothing to do with having the property be used for business. Registration, sale, transportation and use is more the practice of what Mr. Aspinwall does. He does not think this causes the Board to have to accept it just because it is pesticides.

Member Durkin stated there is a series of correspondence in 2001. There is a series of letters and a response from Attorney Phoenix on November 27, 2001. He asked if there was any response from Susan Zarlengo on that last letter.

Attorney Tim Phoenix stated that the correspondence ended.

Attorney Baum stated that he has looked at the firm's file and the town's file and that is the end of it. What the firm determined from that, is that Susan Zarlengo agreed that it was okay.

Referring to Peter Rowell's letter, Member Durkin pointed out that it states the use has grown over time that was permitted by right and the application was denied. He asked what Mr. Rowell was referring to.

Attorney Baum stated that they received notice from Mr. Rowell and responded that this was addressed in 2001. It is believed that Susan Zarlengo felt it was a permitted home occupation.

Member Bookholz asked if the number of vehicles have changed.

Attorney Baum stated that this may have been what Mr. Rowell's concern was.

Member Bookholz noted that under the zoning it states that one vehicle is allowed.

Acting Chair Crapo stated that 203.1 C has specific regulations. Mr. Rowell is saying that if it fits 100% under there by right it wouldn't be before the Board. Mr. Rowell's perception is that the business has grown beyond what is allowed.

Attorney Baum stated that Mr. Rowell was including all of the vehicles and the trailers, which they do not agree, however, they did not think it was anyone's best interest to fight over one more vehicles. That is why they decided to come forward and seek relief for a use variance. This is close to a home occupation and that should be considered for the variance.

Member Durkin asked if this means it can go to a ten-vehicle operation if this is granted.

Attorney Baum stated that they have given three proposed conditions, which they feel are sufficient to alleviate concerns the Board and abutters may have. He is a little hesitant to put in vehicle and employee restrictions because it is hard to enforce.

Acting Chair Crapo asked if the vehicles are parked in the barn.

Attorney Baum noted that the vehicles are not all parked in the barn. There are vehicles outside. There are four trucks that are mixed personal and business use.

Member Bookholz asked if the trucks are lettered.

**Tom Aspinwall, applicant**, noted that the law requires the vehicle used for pest control have 2" lettering and the license number.

Attorney Baum noted it is DOT lettering. One has a magnetic sign.

Acting Chair Crapo explained that in order to use a vehicle for pest control it must have the company name and the license number.

Speaking to Mr. Aspinwall, Member Driscoll asked if his truck is part of the four vehicles.

Mr. Aspinwall confirmed.

Attorney Baum stated that if the Board felt that additional conditions are necessary they would certainly be open to that. The goal is to keep the use that has been for 28 years and not to expand.

There was discussion on the trailers that are used for business.

Member Driscoll asked if they would be open to a restriction of four vehicles and two business trailers.

Mr. Aspinwall confirmed.

Member Driscoll asked the typical work hours of the company.

Mr. Aspinwall stated that the technicians arrive between 7:00 and 7:30. They are dispatched at 8:00 and the day is done by 3:30 or 4:00.

Member Driscoll asked if the business is just insect control.

Mr. Aspinwall replied that it is insects, rodents, rats and mice.

Member Driscoll asked if they are bringing the pests back to the property to be released.

Mr. Aspinwall replied no.

Acting Chair Crapo opened to the public.

**Jeff Pollock, 13 Berry Brook Lane**, spoke in favor of the application.

Acting Chair Crapo noted that a letter was received from Sarah Baybutt. She notes some concerns. She asks that the property follow current zoning. She is also concerned about the pesticides and environmental hazards. He stated that the concerns would be more for whoever is

treating at this physical address. The pesticide board has stringent regulations on the storage facility.

Attorney Baum reiterated that the storage is in a separate locked room in the barn that is fully enclosed. It is subject to all regulations and inspections.

Acting Chair Crapo read a letter from **John Belcher, 215 Sagamore Road**, in support of the application.

In regards to Ms. Baybutt's letter, Attorney Baum noted that she has lived for 19 years in Rye. She moved in when the business was existing and has lived there for the whole time. She even says that the business seems to have little effect on the neighborhood. Her concerns seem to be generic pesticide concerns, which are addressed by strict regulatory controls that Mr. Aspinwall operates under.

Member Driscoll stated that in the letter Ms. Baybutt refers to six backpacks on the exterior of the home. When he was over there everything was immaculate. He asked if this was a one time thing when the backpacks were airing out.

Mr. Aspinwall explained that he constructed a rack on the backside of the barn. He noted that he does not have six backpacks. He was not sure what was meant by that.

Acting Chair Crapo stated that he could see tanks on the docking station from the street.

Mr. Aspinwall pointed out that there are covers for the tanks.

Hearing no further comments or questions, Acting Chair Crapo closed the public session at 9:37 p.m.

Member Durkin stated that the applicant seems to be willing to maintain the business as is with the restriction of the number of vehicles and trailers. It is difficult to know what has occurred over 16 years but it does not seem the scale of the business is materially different. For that reason, he does not have an issue with the applicant being able to continue operating the business as he is today with the restriction of the vehicles and trailers.

Member Bookholz stated that the vehicles should be restricted to five in case another one was needed at some point.

Acting Chair Crapo commented that he would be okay with five. Speaking to the applicant, he asked if GFC was first located in Newington.

Mr. Aspinwall explained that the intent was to run GFC in Newington; however, there were issues and it was not meant to be.

Acting Chair Crapo commented that the business has self-regulated to a degree. He reclosed the public session at 9:40 p.m.

Member Driscoll stated that when he was onsite he was able to see how clean the business was. Mr. Aspinwall runs the business exceptionally. He had some concerns about this type of business being located in that location but all of those were addressed when he went there and he does not have a concern with the business that Mr. Aspinwall is running. If they are able to conform to the vehicle and trailer amount, he is in favor of the application.

There was discussion on the conditions.

Acting Chair Crapo called for a vote to Section 203.1:

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

**3. Substantial justice is done?**

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo – Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo – Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo – Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo – Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

**Motion by Burt Dibble to approve the request of Tom Aspinwall for property owned at 236 Sagamore Road for a variance to Section 203.1 of the Rye Zoning Ordinance with the following conditions:**

- (1) Business activities limited to not more than five (5) business vehicles and not more than two (2) business trailers of double axels or less within the barn and parking area;**
- (2) The use of the property for a pest-control business be limited to the owner of the property or any company owned and controlled by the property owner;**
- (3) That there shall be no “restricted use” pesticides maintained on the property;**

- (4) **That while the property is used for a pest-control business, the owner and/or his affiliated company shall remain registered and in good standing with NHDAMF.**

**Seconded by Russ Bookholz. All in favor.**

The Board agreed to hear the applications of Sampson and Tetreault.

**Motion by Patrick Driscoll to continue the applications number 7, 8, 9 and 12 as listed on the agenda. Seconded by Tim Durkin. Vote: 4-0-1 Abstained: Burt Dibble**

5. **Charles & Judith Sampson of Portsmouth, NH for property owned and located at 300 Pioneer Road, Tax Map 24, Lot 11 request Variances from Section 301.8 B (1) & (7) for a garage and breezeway 31' within tidal wetlands buffer where 100' is required and for a 12' x 14' three season room deck with stairs within the 100' tidal wetlands buffer. Property is in the Single Residence District. Case #26-2017**

**Charles Sampson, 300 Pioneer Road**, explained that after he applied for the variances he found out that he needs to apply for a wetland permit and he does not have that yet. He is hoping for a contingent approval based on receiving the Shoreland Protection Permit. He noted that he is going to be submitting for a minimum impact permit from DES.

Acting Chair Crapo asked if he has had a chance to review what DES will require.

Mr. Sampson stated that his project will be a minimum impact because it does not meet the definition of minor or major. It is within the 100-tidal buffer zone but is previously developed land. He is looking to add a garage with a porch.

Acting Chair Crapo stated that they may approve only 90% of the deck so it would have to come back before the Board for approval. If there is a modification to the plan it voids out the Board's approval. The option would be to continue, wait for that process and come back or withdraw.

After discussion, the applicant agreed to a continuance for three months.

**Motion by Patrick Driscoll to continue the application to the November 1, 2017 meeting. Seconded by Tim Durkin. All in favor.**

6. **Donald & Joan Tetreault, Tetreault Family Rev Trust for property owned and located at 7 Robin Road, Tax Map 202., Lot 100 request Variances from Section 603.1 for expansion of a non-conforming building; from Section 204.3 C to build a ramp in the front setback 2' +/- where 25' is required; and from Section 204.3 B to build a ramp in the side setback 20' +/- where 20' is required. Property is in the General and Coastal Overlay District. Case #27- 2017**



**Donald Tetreault, applicant**, spoke to the Board. He explained that his wife cannot stand. She was at Webster but he took her home because she was not progressing with physical therapy. He continued that the local ambulances will not come to a resident's house and take her out on the stretcher to go to her doctor's appointments. Based on that, he has to put in a walk in to get her to her doctor's. He continued that the lots are all small lots. On one side, the house is 3ft and the other side is 20ft. The lot is non-conforming. The Building Inspector allowed a temporary plank to get her to the doctors. He stated that the plank will be all pressure treated wood. Before it gets to the driveway, he is going to put in stone. The ramp will be in the front of the house.

Member Dibble stated that he was at the site and it looks like it is already constructed.

Mr. Tetreault stated that the Building Inspector issued a temporary permit on the condition that if the Board did not grant the variance it would be taken down.

Member Driscoll asked if the ramp that is there is going to stay.

Mr. Tetreault stated that if he can get his wife to walk he is going to take it down. If it is approved by the Board the ramp that is there is going to stay with some changes being made to the landscaping to make it look nicer.

Acting Chair Crapo opened to the public for comments or questions. Hearing none, he closed the public hearing at 10:05 p.m.

Acting Chair Crapo called for a vote to Sections *603.1, 204.3 C and 204.3 B*:

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

**3. Substantial justice is done?**

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo – Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo – Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

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

Tim Durkin – Yes  
Patrick Driscoll – Yes  
Russ Bookholz – Yes  
Burt Dibble – Yes  
Shawn Crapo - Yes

**Motion by Burt Dibble to approve the application of Donald & Joan Tetreault, for property owned and located at 7 Robin Road, for variances from Section 603.1, 204.3 C and 204.3 B as requested. Seconded by Russ Bookholz. All in favor.**

7. **CWO Rev Trust, Carrie Webb Olson Trustee, for property owned and located at 610 Central Road, Tax Map 5.2, Lot 190** requests Variances from Section 603.1 for expansion of a non-conforming building; from Section 204.3 for construction of a deck within the side setback 3.4' where 20' is required; and from Section 304.5 for lot coverage of 39.2% where 30% is allowed. **Property is in the General Residence District. Case #28-2017**

• Continued to the September meeting. (See motion above)

8. **Stacey Smith Rev Trust, Stacey Smith Trustee for property owned and located at 51 Central Road, Tax Map 12, Lot 36** requests Variances from Section 603.1 for expansion of a non-conforming building; from Section 203.3 B for an addition within the side setback where 17.5' exists, 18' is proposed and 20' is required. **Property is in the Single Residence District. Case #29-2017**

• Continued to the September meeting. (See motion above)

9. **Sean Maxwell for property owned and located at 24 Park Ridge Ave, Tax Map 19.4, Lot 11** requests Variances from Section 204.3 B for a shed within the side setback 8.5' where 20' is required and from Section 304.5 for lot coverage where 35% exists, 36% is proposed and 30% is allowed. **Property is in the General and Coastal Overlay District. Case #30-2017**

• Continued to the September meeting. (See motion above)

10. **Karl & Andrea Swanson for property owned and located at 320 Brackett Road, Tax Map 19, Lot 137** request an Administrative Appeal of the Building Inspector's 3/9/2017 letter. **Property is in the Single Residence District. Case #31-2017**

• Continued to the September meeting. (See motion above)

11. **Karl & Andrea Swanson for property owned and located at 320 Brackett Road, Tax Map 19, Lot 137** request Variances from Section 203.1A to allow for two dwellings on one lot and from Section 506.3 N for an accessory dwelling in a detached building and from Building Code Relief from Section 7.9.1.2 for the continued use of septic system. **Property is in the Single Residence District. Case #32-2017.**

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

12. **Whittemore Family Exempt Trust, Galye Whittemore, Alexandra Glickman, Trustees of 4091 Camellia Ave, Studio City, CA for property owned and located at 48 Straw's Point, Tax Map 8.4, Lot 89** request Variances from Section 603.1 for expansion of a non-conforming building; from Section 203.3 C for expansion of garage and porch within the front setback 11.1' where 30' is required; from Section 203.3B for construction on a connector within the passageway side setback of 16.9' for the house and +/- 2' for a patio where 20' is required; from Section 203.3 B for construction within the Straw's Point side setback of 25.1' where 20' is required; from Section 203.3E for building coverage of 25% where 15% is allowed and lot coverage of 38.9% where 15% is allowed and from Building Code Relief Section 7.9.2.5 for septic system 5' from the front property line where 10' is required. **Property is in the Single Residence and Coastal Overlay District. Case #33-2017**

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

### **Adjournment**

**Motion by Burt Dibble to adjourn at 10:15 p.m. Seconded by Tim Durkin. All in favor.**

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

*Respectfully Submitted,  
Dyana Ledger*

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant:** Hoefle, Phoenix, Gormley & Roberts, PA

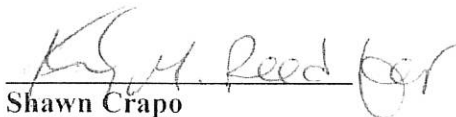
**Owner:** Manuel & Carol Barba

**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:** August 2, 2017

**Decision:** The Board vote 4-0-1 to deny the applicant's request for a Rehearing and Reconsideration of the Rye Board of Adjustment's June 7, 2017 denial of Mr. Barba's Request for Rehearing for the property located at 740 Washington Road, Tax Map 11, Lot 103, Case #04-2017.

  
Shawn Crapo  
Vice-Chairman

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

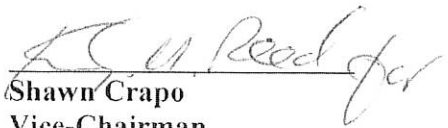
**Applicant/Owner:** Glenn Walker & Elizabeth Fairchild

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

**Application case:** Case # 20-2017

**Date of decision:** August 2, 2017

**Decision:** The Board unanimously voted to grant the applicant's request for a  
Variances from Section 510.3 to allow for an 8ft fence.

  
**Shawn Crapo**  
Vice-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 111, 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:**

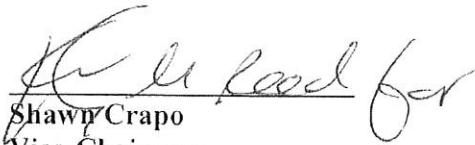
August 2, 2017

**Decision:**

The Board unanimously voted to grant the applicant's request Variances from Section 603.1; Section 204.3C for addition of second floor 11' +/- within the front property line; from Section 204.3 C for an outdoor shower within the 22.2' Breakers Road front property line from Section 204.3B for addition 8.6' within the side property line and from Section 304.5 for building coverage of 19.1% with the condition the three (3) season porch be reviewed and approved by the building inspector.

The Board voted 3 to 2 to grant the applicant's request for a Variance from Section 500.2 for two (2) parking spaces.

The Board voted 3 to 2 to grant the applicant's request for a Variance from Section 500.3 for the location of the parking spaces located within the front yard with the condition parking be confined right side of the central front walk and the breakers side of the property and not within 10' of the corner.

  
Shawn Crapo  
Vice-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 111, 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:**

Thomas J. Aspinwall

**Property:**

236 Sagamore Road, Tax Map 22, Lot 53  
Property is in the Single Residence District

**Application case:**

Case # 24-2017

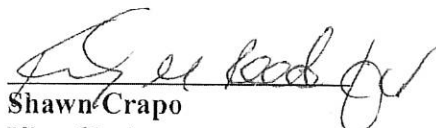
**Date of decision:**

August 2, 2017

**Decision:**

The Board voted unanimously to grant Variance from Section 203.1 to allow a pest control business office with materials, equipment and vehicle storage within the existing barn on the property with the following conditions:

1. Business activities limited to five (5) business vehicles and two (2) trailers of double axles or less within the barn and parking area;
2. That the use of the Property for a pest-control business be limited to the owner of the Property or any company owned and controlled by the Property owner;
3. That there shall be no "restricted use" pesticides maintained on the Property;
4. That while the Property is used for a pest-control business, the owner and/or his affiliated company shall remain registered and in good standing with NHDAMF.

  
Shawn Crapo  
Vice-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

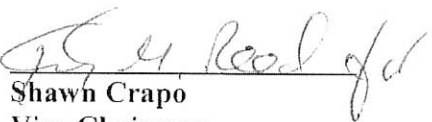
**Applicant/Owner:** Donald & Joan Tetreault, Tetreault Family Rev Trust

**Property:** 7 Robin Road, Tax Map 202., Lot 100  
Property is in the General Residence and Coastal Overlay

**Application case:** Case # 27-2017

**Date of decision:** August 2, 2017

**Decision:** The Board voted unanimously to grant the Variances from Section 603.1 for expansion of a non-conforming building; from Section 204.3 C to build a ramp 2' +/- in the front setback and from Section 204.3 B to build a ramp 20' +/- in the side setback.

  
**Shawn Crapo**  
Vice-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

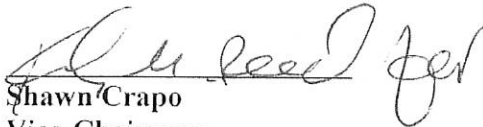
**Applicant/Owner:** Dan & Diane Conway

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

**Application case:** Case # 25-2017

**Date of decision:** August 2, 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 September 6, 2017 meeting.

  
Shawn Crapo  
Vice-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 111, 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

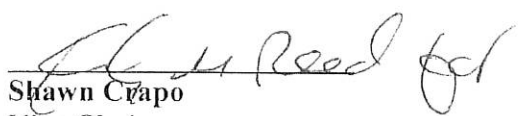
**Applicant/Owner:** Charles & Judith Sampson of Portsmouth, NH

**Property:** 300 Pioneer Road, Tax Map 24, Lot 11  
Property is in the Single Residence District

**Application case:** Case # 26-2017

**Date of decision:** August 2, 2017

**Decision:** The Board voted unanimously to continue the applicant's request for Variances from Section 301.8 B (1) & (7) for a garage and breezeway 31' within tidal wetlands buffer where 100' is required and for a 12' x 14' three season room deck with stairs within the 100' tidal wetlands buffer to the November 1, 2017 meeting.

  
Shawn Crapo  
Vice-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:**

Karl & Andrea Swanson

**Property:**

320 Brackett Road, Tax Map 19, Lot 137  
Property is in the Single Residence District

**Application case:**

Cases # 31-2017 and 32-2017

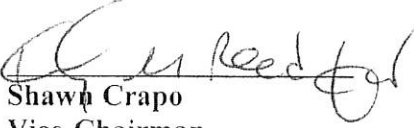
**Date of decision:**

August 2, 2017

**Decision:**

The Board unanimously voted to continue the applicant's request for an Administrative Appeal of the Building Inspector's 3/9/2017 letter to the September 6, 2017 meeting.

The Board unanimously voted to continue the applicant's request for Variances from Section 203.1A to allow for two dwellings on one lot and from Section 506.3 N for an accessory dwelling in a detached building and from Building Code Relief from Section 7.9.1.2 for the continued use of septic system to the September 6, 2017 meeting.

  
Shawn Crapo  
Vice-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:**

CWO Rev Trust, Carrie Webb Olson Trustee

**Property:**

610 Central Road, Tax Map 5.2, Lot 190  
Property is in the General Residence

**Application case:**

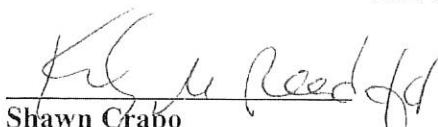
Case # 28-2017

**Date of decision:**

August 2, 2017

**Decision:**

The Board voted 4-0-1 to continue the applicant's request for Variances from Section 603.1 for expansion of a non-conforming building; from Section 204.3 for construction of a deck within the side setback 3.4' where 20' is required; and from Section 304.5 for lot coverage of 39.2% where 30% is allowed to the September 6, 2017 meeting.

  
Shawn Crapo  
Vice-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

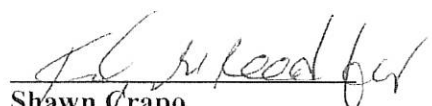
**Applicant/Owner:** Stacey Smith Rev Trust, Stacey Smith Trustee

**Property:** 51 Central Road, Tax Map 12, Lot 36  
Property is in the Single Residence

**Application case:** Case # 29-2017

**Date of decision:** August 2, 2017

**Decision:** The Board voted 4-0-1 to continue the applicant's request for Variances Section 603.1 for expansion of a non-conforming building; from Section 203.3 B for an addition within the side setback where 17.5' exists, 18' is proposed and 20' is required to the September 6, 2017 meeting.

  
**Shawn Crapo**  
Vice-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:**

Sean Maxwell

**Property:**

24 Park Ridge Ave, Tax Map 19,4, Lot 11

Property is in the General Residence and Coastal Overlay District

**Application case:**

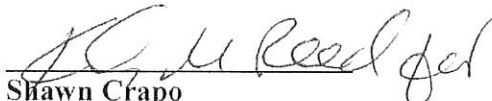
Case # 30-2017

**Date of decision:**

August 2, 2017

**Decision:**

The Board unanimously voted 4-0-1 to continue the applicant's request for Variances from Section 204.3 B for a shed within the side setback 8.5' where 20' is required and from Section 304.5 for lot coverage where 35% exists, 36% is proposed and 30% is allowed to the September 6, 2017 meeting.

  
Shawn Crapo  
Vice-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

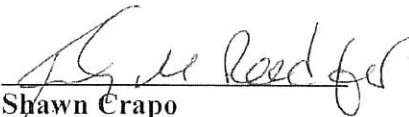
**Applicant/Owner:** Whittemore Family Exempt Trust, Galye Whittemore, Alexandra Glickman, Trustees of 4091 Camellia Ave, Studio City, CA

**Property:** 48 Straw's Point, Tax Map 8.4, Lot 89  
Property is in the Single Residence District and Coastal Overlay District

**Application case:** Case # 33-2017

**Date of decision:** August 2, 2017

**Decision:** The Board voted 4-0-1 to continue the applicant's request for Variances from Section 603.1 for expansion of a non-conforming building; from Section 203.3 C for expansion of garage and porch within the front setback 11.1' where 30' is required; from Section 203.3B for construction on a connector within the passageway side setback of 16.9' for the house and +/- 2' for a patio where 20' is required; from Section 203.3 B for construction within the Straw's Point side setback of 25.1' where 20' is required; from Section 203.3E for building coverage of 25% where 15% is allowed and lot coverage of 38.9% where 15% is allowed and from Building Code Relief Section 7.9.2.5 for septic system 5' from the front property line where 10' is required to the September 6, 2017 meeting.

  
Shawn Crapo  
Vice-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 171, 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.

July 12, 2007

Dear Kim,

I am writing to request a slight change to my Variance Request for my home at 11 Surf Lane, Rye, NH. I would like to change the screen porch to a 3 season room with casement windows rather than screens. No changes are proposed to the size, structure, or roof of the building, just windows rather than screens.

Thank you for your consideration, and we look forward to our hearing on August 2, 2017.

Sincerely,

*Richard Carey*

Richard Carey

August 2, 2017

TOWN OF RYE, NH

ZONING BOARD OF ADJUSTMENT

DEAR BOARD MEMBERS:

Ref> VARIANCE REQUEST ON PROPERTY OWNED BY THOMAS J ASPINWALL

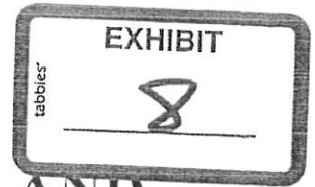
236 SAGAMORE ROAD

MY NAME IS JOHN S BELCHER OF 215 SAGAMORE ROAD. I HAVED LIVED IN RYE FOR OVER 80 YEARS, 45 YEARS AT THIS ADDRESS. I BELIEVE THAT TOM ASPINWALL HAS BEEN IN BUSINESS AT THIS LOCATION AT LEAST 30 YEARS AND I HAVE NEVER FOUND THE BUSINESS UNPLEASANT OR OBJECTIONAL. HE HAS AN OCCASIONAL PICKUP TRUCK COMING AND GOING AND HIS ACTIVITIES ARE HARDLY NOTICEABLE. THEY DO NOT CONTRIBUTE TO THE LARGE AMOUNT OF TRAFFIC THAT IS NOW ON THIS ROAD.

I CAN'T UNDERSTAND WHY AFTER ALL THESE YEARS WHY HE WOULD NOW NEED A TO HAVE A VARIANCE FOR THIS BUSINESS, HOWEVER IF HE NEEDS A VARIANCE, I SEE NO REASON WHY HE SHOULD NOT BE GRANTED ONE.

  
JOHN STEPHEN BELCHER

215 SAGAMORE ROAD, RYE, NEW HAMPSHIRE



# TITLE XL AGRICULTURE, HORTICULTURE AND ANIMAL HUSBANDRY

## CHAPTER 430 INSECT PESTS AND PLANT DISEASES

### Pesticides Controls

#### Section 430:49

##### **430:49 Preemption of Local Regulation. –**

I. Administration and enforcement of this subdivision shall be implemented in an equitable manner throughout the state. This subdivision is of statewide concern and occupies the whole field of regulation regarding the registration, sale, transportation, or use of pesticides to the exclusion of all local regulation. Except as otherwise specifically provided in this subdivision, no ordinance or regulation of local government, including but not limited to, an action by a local governmental agency or department, a county board of commissioners or a city council, or a local regulation adopted by the use of an initiative measure, may prohibit or in any way attempt to regulate any matter relating to the registration, sale, transportation, or use of pesticides, and any of those ordinances, laws or regulations are void and of no force or effect.

II. This section shall not be construed to invalidate any ordinance or regulation of a local government in effect on the effective date of this section.

Source. 1993, 279:1, eff. Aug. 20, 1993.

July 31, 2017  
Town of Rye- Zoning Board

From Sarah Baybutt  
10 Berry Brook Lane MAP 22 BLOCK 048  
Re: Case 24-2017 Variance to allow business in residential district

I am writing to provide my comments in regards to the abutter notice and the above case, as I am unable to attend the meeting on Aug 2, 2017

I have lived next door to Tom Aspinwall and his business, Granite State Pest Control at 236 Sagamore Rd for the 19 years I have lived in Rye. Tom is an example of what the perfect neighbor is: occasional sharing of food, and helping out with plowing and other assistance (Including providing a generator when the basement was flooding during the ice storm of 2010?? When we lost power for 5 days)

My view of Mr. Aspinwall's property has always been restricted by his large barn. As a result of my limited view, I am less able to see the daily operations and activity of personnel and vehicles. As such, it seemed to me that the business operations have had little adverse effect to the neighborhood. The business appeared to be successful and grew so that at some point an off site location was used to store vehicles and other supplies. About 2 years ago (? Not exactly sure when), vehicles and supplies were moved back to the property and space was made to provide additional parking and storage was added to the back of the barn.

Earlier this year, another neighbor (abutter ) put her property up for sale. There were 2 buyers who withdrew their interest due to the view of the trucks and other evidence of the business. (I heard this from the owner and the realtor) Tom erected a fence between their properties to mitigate the view and also removed some the trees and bushes between our properties.

In so doing, he inadvertently has increased the view I have of the back of the barn including new storage for 6 back-packs (for spraying pesticides etc)

I have no issues with his having the business on the property as long the following town zoning laws are observed:

Section 102: secure safety (remove pesticides)

Promote health – (remove pesticides)

Assure proper use of natural resources (remove pesticides near Berry's Brook and associated marchland/wetlands)

Section 202.10 Buffer between Residential and non-residential use – 50 feet buffer – none between our properties (add a fence/plantings?)

203C .2c – no more than one other person employed (4 or 5 employees?)

203.2K5 – no more than 2 commercial vehicles (there are 5? - store excess vehicles elsewhere)

203.2K7 storage of hazardous materials – (store pesticides elsewhere – even residential use pesticides are hazardous)\*

203.2K10 – detracts from the residential character of the property. (Store vehicles etc elsewhere). This business in the residential area could in the future effect the sale of neighboring properties.

301.8 Wetlands buffer is 100 feet - I am not sure what the distance is - Berry's Brook and the wetlands/marches are abutting the property to the south. \*

\* I bought some pesticides from Home Depot – “pesticides designated for “general use” as explained on page 3 of the letter dated June 9<sup>th</sup> to the town zoning board from Kevin Baum on behalf of Mr. Aspinwall. These are the only type stored according to the letter.

The precautionary statement on the package states: “Environmental Hazards: This product is toxic to aquatic organisms including fish and invertebrates. Do not contaminate water ....Drift and run-off may be hazardous to fish in water adjacent to treated areas”

Respectfully Submitted

Sarah R Baybutt

10 Berry Brook Lane

603 433 9062



longstanding business on the Property. The loss to Mr. Aspinwall if this request is denied would be significant, as would the potential loss to the public given GSC's work for local non-profit organizations. Accordingly, there will be no gain to the public from denial of the requested variance.

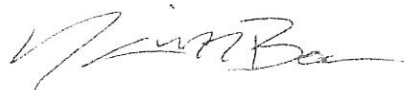
V. CONCLUSION AND PROPOSED CONDITIONS

For all the reasons herein stated, Mr. Aspinwall respectfully requests that the ZBA grant the requested variance, subject to the following conditions:

- That the use of the Property for a pest-control business be limited to the owner of the Property or any company owned and controlled by the Property owner;
- That there shall be no "restricted use" pesticides maintained on the Property;
- That while the Property is used for a pest-control business, the owner and/or his affiliated company shall remain registered and in good standing with NHDAMF.

Thank you for your consideration of this request. We look forward to presenting the application to the ZBA.

Very truly yours,



Kevin M. Baum

KMB/dmw  
Encls.

cc: Thomas J. Aspinwall