

TOWN OF RYE – BOARD OF ADJUSTMENT

Wednesday, June 7, 2017

7:00 p.m.

Rye Junior High

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

Others Present: Planning/Zoning Administrator Kimberly Reed

I. Call to order and Pledge of Allegiance

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

II. Approval of Minutes:

- **April 5, 2017**

Motion by Tim Durkin to accept the minutes of April 5, 2017 as amended. Seconded by Patrick Driscoll. Vote: 5-0. Abstained: Gregg Mikolaities and Charlie Hoyt

- **May 3, 2017**

Motion by Shawn Crapo to accept the minutes of May 3, 2017 as amended. Seconded by Tim Durkin. All in favor.

III. Applications:

- **Continuance request from Theresa Carey & Richard Carey Revocable Trust.**

Motion by Burt Dibble to continue the application of Theresa Carey & Richard Carey, for property owned and located at 11 Surf Lane. Seconded by Shawn Crapo. All in favor.

Note: Shawn Crapo recused himself from the following application.

Seated for the following application: Patricia Weathersby, Burt Dibble, Patrick Driscoll, Charles Hoyt and Gregg Mikolaities. (Tim Durkin was not on the original hearing.)

- 1. Re-hearing of application of Stephen C. Brown, Trustee, SKRJ Realty Trust, 21 South Main Street, Rochester, NH for property owned and located at 0 Big Rock Road, Tax Map 8.1, Lot 45 & Tax Map 5.2, Lots 79, 80, limited purposed for proving reasons for its March 1, 2017 denial of Variances from Section 204.3F for lot #1 to have 31,395sq.ft. of lot area and 38.86' of frontage where 44,000sq.ft. of lot**

area and 150' of frontage is required: lot #2 to have 31,121sq.ft. of lot area and 51.92' of frontage where 44,000sq.ft. of lot area and 150' of frontage is required; and from Section 202.13 for each lot for less than 30,000sq.ft. of contiguous upland soil.

Property is in the General Residence/Coastal Overlay District. Case #02-2017.

Chair Weathersby noted that in March the Board had a full public meeting on this application. The Board voted unanimously to deny the request for variances. A rehearing request was made. The Board granted the rehearing request for the limited purpose of better specifying the reasons for denying the applicant's variance requests. Since this is a public hearing request, public testimony will be heard; however, it will be limited to the rationale the Board had for denying the variances. There will be no new testimony concerning whether those variances should have been denied or granted. This is strictly limited to clarifying the reasons for denial. She opened to Attorney Phoenix to speak in regards to the Board's rationale for denying the variances.

Attorney Tim Phoenix, representing the applicant, spoke to the Board. He stated that the main reason he wanted to be present was to be able to address anything that came up in the public hearing. He is content to see where the hearing goes while reserving the right to speak before the public hearing is closed, based on the discussion.

Chair Weathersby explained that the record from March will be incorporated into this meeting. The reasons will be discussed so it can be made very clear, the Notice of Decision can be issued and everyone will know exactly why the Board voted the way it did.

Chair Weathersby opened to the public to speak in regards to the Board's rationale for their vote in March.

Robert Crapo, 8 Big Rock Road, asked if the thirty (30) day right to appeal will start from this meeting.

Chair Weathersby replied that it will start this evening when the Board issues their decision. She noted that the applicant may have an opportunity to come back and ask for another rehearing.

Hearing no further comments from the public, regarding the Board's rationale for denying the variances, Chair Weathersby closed the public hearing at 7:27 p.m.

Motion by Patrick Driscoll to incorporate the record of the March 1, 2017 hearing into the record of this meeting held on June 7, 2017. Seconded by Burt Dibble.

Vote: 5-0

(Patricia Weathersby, Burt Dibble, Patrick Driscoll, Charles Hoyt and Gregg Mikolaities)

Chair Weathersby noted that she wrote a draft Notice of Decision that the Board can use for discussion purposes only. She explained that the Board is not re-voting on the variances. The entire record, including the vote, is being incorporated and the Board is clarifying their rationale for denying the variances. The draft Notice of Decision says;

For discussion purposes only: Upon rehearing for the sole purpose of better specifying the Board's reasons for denying the applicant's variance request on March 1, 2017. The Board

incorporated the record from the March 1 hearing of this matter into the June 7, 2017 rehearing in its entirety and restated its decision as follows:

The Board unanimously denies the applicant's request for variances from the following sections (section listed):

- *Finding that the variances would result in: diminution of the property values of surrounding properties, overcrowding of the subject property in the neighborhood, adverse changes in the existing character of the neighborhood and inadequate lot frontages for proper planning, safety and aesthetics.*

Chair Weathersby opened to the Board for comments, changes or discussion.

Member Dibble stated that it seems they are trying to get the opinions of the members who voted on the application on record, as to why they voted the way they did. It seems that it would be most expeditious to go around the table and have the members state why they voted the way they did. He continued that he had three concerns. One was that it was clear to him that there would be diminution of property values. He based that on the concerns of the neighbors regarding the closeness of the new buildings to their properties and their concerns about their views relative to the new construction. There is a long precedent on the part of the Board to not necessarily have the opinion of a realtor, appraiser or assessor to determine potential property value changes but to rely on the opinion of the board members themselves. While he may not entirely agree with that approach, it is his opinion that there would be a negative impact on property values. His second concern was safety on the roadway. The exits from these two properties would be very narrow. It is a road that has significant through traffic, a curve and many driveways. It seemed to him that it was a significant issue to have more entering and turning traffic. The third was the fact that the wetness of the center of the property decreased the amount of upland available for the siting of the building. He knows there was some discussion on whether this was a question of just subdividing the property and no consideration should be given to what the buildings will be like. He was convinced by the notion the building lots had been lined out by virtue of the wetness and the uplands. Because of that issue, the buildings were crowded closer to the edges of the properties than might otherwise have been. That issue, with the additional buildings in the back of properties, created a quality of congestion. Those were his reasons; traffic congestion, congestion on the land and decreased property values.

Member Hoyt stated that he agrees with Member Dibble. His reasons were similar. He continued that the wetlands issue did not come into play in his decision. However, he felt the overcrowding of the property could lead to the diminution of property values for surrounding properties.

Member Mikolaities stated that he does not have anything to add. He thinks the draft Notice of Decision does a nice job of summarizing.

Member Driscoll stated the biggest thing for him is they were all relevant; Section 202.13, the upland soils seem to be relevant. As far as granting the variance, he felt it would be contrary to the public interest.

Chair Weathersby stated they need to list the reasons in a Notice of Decision. She continued that her reasons have been very clearly stated on the record previously. It seems as though what is drafted may need to be “tweaked” a little. Sounds like it was a finding of the Board that it was believed that it would cause diminution of property values. She thinks she has heard pretty much everyone speak to overcrowding. Member Dibble did a good job of speaking to the inadequate lot frontage for the safety and esthetics. The adverse changes in the characteristics of the neighborhood the draft speaks to a little. She asked if there were some suggestions for changes or tweaks to the Notice of Decision.

Member Driscoll stated that his issue was the contrast to public interest as it tied in to safety and lot frontages and site lines on the road. He thinks the draft was really well done. He continued that he ties “granting the variance would not be contrary to the public interest” to safety. He thinks of safety in terms of the pathways and roads that are in through that area. He would add that as a bullet point. He suggested “less than adequate lot frontages provide a safety issue on the roadway that would be contrary to the public interest”.

Member Dibble stated there is one more point that was raised mostly by the abutters during public testimony. This is the matter of public wetlands and water flow, over and through the property. He remembers saying that it is difficult to stay on track and not getting drawn off into that conversation. He was convinced by the engineering information that was presented that the proposal actually improved the water issue on the property. However, he also remembers saying a number of times that the discussion was not about the water. The discussion was about the other issues that were required by the variances.

Chair Weathersby stated that she agrees this is not a rationale for denial. She read the list for denial of the variances.

- *Diminution of the property values of surrounding properties, overcrowding of the subject property in the neighborhood, adverse changes in the existing character of the neighborhood and inadequate lot frontages for proper planning, safety and aesthetics.*
- *Less than inadequate lot frontage provides a safety issue on the roadway that is contrary to the public interest.*

Motion by Burt Dibble to deny the variances based on the incorporated record and stating the Board’s rationale, as just described. Seconded by Charles Hoyt.

Vote: 5-0

(Patricia Weathersby, Burt Dibble, Patrick Driscoll, Charles Hoyt and Gregg Mikolaities)

Note: Shawn Crapo was reseated.

Seated for the following application: Patricia Weathersby, Shawn Crapo, Burt Dibble, Tim Durkin and Charlie Hoyt. *(Patrick Driscoll stepped down as he did not sit for the original hearing.)*

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

- **Continued from last meeting for Board approval of Notice of Decision.**

Chair Weathersby explained the first case is 04-2017, where the Board voted 4 to 1 to deny the Administrative Appeal from the Building Inspector's November 1, 2016 Notice of Violation. She continued there is a draft Notice of Decision in the members' packets. It was reviewed quickly at the May meeting and there was some discussion on whether there was further discussion on some of the items. The minutes have been reviewed.

Chair Weathersby reviewed the reasons for denial:

- *The majority of the Board found that neither the use nor the structure of the second dwelling on lot was grandfathered, and therefore, the dwelling and its use are not exempt from present zoning regulations.*
- *The majority of the Board found the Town does not estop from asserting that the second dwelling was illegal.*
- *The Board unanimously found that the second lacked individual sewer disposal system as required by Rye's Building Code and New Hampshire Law.*
- *The Board unanimously found that the existing dwelling and associated effluent disposal system were located within the wetlands buffer and prohibited by Rye's Zoning Ordinance.*

Member Dibble stated that it would be more appropriate for Alternate Mikolaities to sit for him, since he was absent last month.

Chair Weathersby clarified that this was addressed at the April meeting. She noted that Member Dibble was present for that meeting. She continued that she went back and forth on the wording "the majority of the Board".

Member Crapo commented all the votes were 4 to 1.

Chair Weathersby explained the final vote was 4 to 1 to deny the variances. Numbers 1 and 2 were 4 to 1. Number 3 and 4 were unanimous.

It was agreed to leave the Notice of Decision the way it is drafted regarding the votes.

Chair Weathersby asked if the Board has anything they would like to add in regards to additional reasons. She suggested adding that it was undisputed that the building size was less than 960sf at ground level.

Member Crapo stated that this probably comes into play with the variances versus the administrative appeal.

Member Durkin agreed.

Motion by Tim Durkin to issue the Notice of Decision as drafted and with the amended date. Seconded by Burt Dibble.

Vote: 5-0

(Patricia Weathersby, Shawn Crapo, Burt Dibble, Tim Durkin and Charles Hoyt.)

Note: Burt Dibble stepped down, as he was not present for the following case. Gregg Mikolaities was seated.

Seated for the following application: Patricia Weathersby, Shawn Crapo, Tim Durkin, Charles Hoyt and Gregg Mikolaities.

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

- **Continued from last meeting for Board approval of Notice of Decision.**

Chair Weathersby pointed out there is a draft Notice of Decision in the members' packets. The first page lists the votes on the various variances and building code relief. The rationale is listed on the second page.

The Board reviewed the draft Notice of Decision.

- *The dwelling is of a size that far below all standards for a dwelling and accessory dwelling in the zoning ordinance.*
- *The dwelling is too small for comfortable habitability and no occupancy limits were proposed.*
- *Dwelling was enlarged and modified without building permits and does not meet present building and life safety codes.*
- *A second dwelling on the lot is contrary not only to the zoning ordinance but to the spirit of the original Hunter's Run Subdivision Plan, which stated its single residence lot was not to be subdivided.*

- *The dwelling's location, completely within the wetlands buffer, 21ft from the wetland and within the Aquifer Protection Zone, may be detrimental to the environment and public water resources.*
- *The driveways location, primarily within the wetlands buffer and within the Aquifer Protection Zone, may be detrimental to the environment and public water resources.*
- *The proposed septic tank, to be located entirely within the wetland buffer and within the Aquifer Protection Zone, may be detrimental to the environment and public water resources.*
- *The proposed delay of installing the proposed septic system and allowing the cesspool waste disposal situation to continue was unreasonable and detrimental to the environment and public water resources.*

Member Crapo suggested adding "to be utilized" to number 8. It was being proposed to allow a renter to stay in the dwelling so the system would be utilized. It was not going to be sitting in an undisturbed state.

Member Durkin stated that he would strike #2, the dwelling is too small for comfortable habitably. It is really not the Board's decision to determine whether it is too small for someone to live in comfortable.

Member Crapo commented the discussion was that they did not have a code compliance review. It appeared that there were life safety standards, with access, egress, size of spiral staircase, which made it too small by code standards.

Member Mikolaities pointed out that #3 may cover this issue.

Chair Weathersby agreed. She continued the habitability issue may be covered in #1. She agrees that #2 does not add anything and perhaps complicates the notice. She asked about the wording "may be detrimental" with regard to the environment.

Member Crapo commented that they are not experts to say "is".

Member Durkin commented that he does not have a problem with the wording.

Motion by Gregg Mikolaities to finalize the Notice of Decision with two edits; #2 is deleted and the words "to be utilized" is added to the last reason, with the date of the notice being updated. Seconded by Shawn Crapo.

Vote: 5-0

(Patricia Weathersby, Shawn Crapo, Tim Durkin, Charles Hoyt and Gregg Mikolaities)

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

- 4. Harbor Street Limited Partnership of 7B Emery Lane, Statham, NH for property owned at 421 South Road, Tax Map 4, Lot 31,** requests a Special Exception for property located at Tax Map 4, Lot 25, 421 South Road, from Section 301.7B to construct a driveway with the following: (1) a 17'x16' wetlands crossing 51ft from a vernal pool where a 100ft setback is required. (2) 2,900sf within the vernal pool buffer where 100ft buffer is required; (3) 3,510sf within the wetlands buffer where a 75ft buffer is required. **Property is in the Single Residence District. Case #13-2017.**

Chair Weathersby stated that at the last month's meeting, the applicant presented the application and the Board was about to take public comment. She would like to continue with public comment. The Board may have other questions for the applicant and for the public.

Chair Weathersby opened to the public in favor of the application. No comments were heard. She opened to the public in opposition to the application.

Anne Hodsdon, 427 South Road, submitted and read from documents submitted to the Board.

***Please see attached – Anne Hodsdon, 427 South Road
U.S. Drought Monitor, New Hampshire**

Bud Barrett, 290 West Road, stated that the applicant has addressed the impacts on water, soil, ground flow and septic plumes. However, the applicant did not address, in the ground water and septic plumes, micro-pollutants. These are hormones, pharmaceuticals, and in some cases, effluent from body waste. He did not see any formal survey or list. If it is not known what is there, it cannot be said that there is no impact. The State has several species that would inhabit wetland, which are endangered or in the special concern category (almost threatened). Further insult to these species or their habitat would put them in a threatened condition. The endangered species is the Marbled Salamander, which lives in this kind of a habitat. If there was no survey to determine whether it was there, then it cannot be known if an endangered species is going to be impacted. In talking about the impacts, it is about the immediate impacts, the site-specific ones, ground flow and septic plume. Another impact is spatial and time. If this bridge is allowed to go across it would be setting the stage for permanent human occupancy. That human occupancy can eliminate habitat and its activity can drive out species. When that happens, the ecosystem gets weaker and weaker. Not only does what is going to go on the bridge and span abutments have to be considered, but also frogs and salamanders may not go under it because they are afraid of the dark, but the spatial and time impacts caused by the bridge have to be considered as well.

Dr. Barrett stated that the other issue that bothers him is that the bridge, (crossing of the wetlands), was said by the applicant to have no other alternative. He pointed out that there is always another alternative. It's obvious the applicant has done a benefit cost ratio and determined that this is the best for his advantage. Anytime an impact analysis, an assessment or statement is done, there is always a benefit cost ratio involved in the project or in the application for permit. He did not see any of this in this application package. If there is one, the Board should be made aware of it. He continued that an ecosystem, such as this, cannot be surrounded with three pieces of habitation and expect not to have an impact on it. All of

the activities that humans do around their place has an impact. When the Board thinks about this permit, besides the benefit to the applicant in terms of benefit cost, running a road up through another area might have a cost that would probably be prohibited; however, that is the applicant's economics. He pointed out that the Blue Spotted Salamander, Jefferson Salamander and Northern Leopard Frog are all on the special concern list for the State of New Hampshire. All of them could be in this area. Until a transect, or a grid survey is completed, this will not be known.

Chair Weathersby asked if there is reason to believe that any of the species that were mentioned are in this area.

Dr. Barrett explained that to find out whether the species are there or not, there needs to be some time and energy spent on a grid survey or transect line survey. It needs to be documented more than once. If it is done only once, the species may not be seen. If the study is done on April 1st, May 1st and June 1st, there will be a change in the species. The frogs use the pools to breed in and then move into a woodland habitat. The salamanders stay at the pools and use that area all the time. Until it is known whether the species are there or not, to say there is no or minimal impact, is a little reckless or without merit.

Dr. Barrett explained a grid and transect survey.

Chair Weathersby asked Dr. Barrett about his qualifications to speak on this issue.

Dr. Barrett stated that he worked for the Army Corp of Engineers for 11 years. He was chief of the Environmental Impact Assessment Section for the New England Division for 7 years. His educational background is a doctrine in philosophy and zoology, with an emphasis on natural history and ecology. He also worked for N.H. Fish and Game and was involved in the civil power plant site evaluation.

Bob Siener, 399 South Road, submitted and read from documents submitted to the Board.

***Please see attached – Bob Siener, 399 South Road
Exhibit 1, 2 and 3**

Member Hoyt noted that he sees the road that is in question and its passage through the vernal pool setback. He asked if hitting the edge of the setback would be detrimental to the animals that live in the pool. He asked if it is as detrimental in that location, as it would be closer to the vernal pool.

Mr. Siener stated that he does not have the qualifications to give that answer. He would feel that the answer would be "yes" because any disruption would be detrimental.

Susan Cole-Ross, 333 West Road, stated that she is not an expert; however, she does know that many of the species do their nesting along the edges.

Member Hoyt clarified the species actually live in the edges when the wet season approaches.

Ms. Ross replied that this is how she understands it.

Chair Weathersby stated that she believes there was discussion about this on the site walk. She commented that they can ask the applicant to address that question.

Stephanie Patrick-Chalfont, 388/410 South Road, read from a document she submitted to the Board.

***Please see attached, Stephanie Patrick-Chalfont, 410 South Road
Rye Newsletter – Conservation and Wetland Buffers**

Jeff Ross, 333 West Road, reviewed and addressed documents he submitted to the Board.

***Please see attached, Jeff Ross, 333 West Road
Exhibit 1A and 1A Cross Section**

Mr. Ross stated that the driveway will lead to a house. It has to be considered that the house will be built if the driveway is allowed. The house sits surrounded by an abutter's property and also the wetlands and vernal pools. It can also be noted that the house site would be above the vernal pools and wetlands so any water flow from the house, impervious surfaces and from a septic system would be moving downhill toward the abutter or toward the wetland and vernal pool. He continued that the second diagram submitted is a cross section showing what the house would actually look like sitting on top of the home site. The key thing to understand about the home site is that test pits dug by Beal's Associates reveal that at all four corners of that home site the seasonal high-water table would be between 2ft and 2.5ft. A basement at 6 to 8ft below would obviously be below the seasonal high-water table, which would add to the water problems cause by the house because a sump pump would need to be run the majority of the year. A serious question that goes to the public interest, which is the water, is the fact that this water would be coming out of the basement unfiltered either in the direction of the abutter or one of the designated wetlands or vernal pool areas. To his knowledge, this has not been considered. It is an issue that has not been addressed, but it is very clear that building a home with a full basement is going to put it well below the seasonal high-water table.

Member Crapo asked if he is saying that the test pit shows the seasonal high-water table to be at 2 to 2.5ft below the surface.

Mr. Ross explained the test pits were dug at the point where the house site would sit and a seasonal high-water table was hit in each of those test pits somewhere between 2ft below the surface and 2.5ft. Obviously, a basement would go considerably deeper, at least 7 or 8ft deep. He noted that the seasonal high-water table sometimes sits in the designated leach field area, which will contribute to some issues with water flow from that.

Referring to the cross section, Member Driscoll asked how much of it is based on actual fact.

Mr. Ross stated that it has been taken directly from the maps that have been provided by Beal's Associates as part of their application to the Planning Board.

Member Driscoll asked if the applicant has seen a copy of the documents.

Mr. Ross replied that they have not seen the cross section. He continued that there are not only some issues of where to put the driveway but also with the home site itself. The issues are water related which goes to "contrary to the public interest".

Chair Weathersby stated that the location of the house and the septic system are not in the wetland buffers or the vernal pool buffers. She asked Mr. Ross if he saying the buffers are inadequate in this instance.

Mr. Ross explained that it has not been considered that a sump pump will be functioning at this house dumping more water into places it is not supposed to be, from an unfiltered, perhaps contaminated, radon filled basement into the vernal pool and wetland buffers. That is a danger to those vernal pools and wetlands.

Susan Cole Ross, 333 West Road, stated that Section 306.2 reads that the purpose of the Aquifer and Wellhead Protection District is to protect, preserve and maintain the groundwater resources and groundwater recharge areas in Rye. She stands before the Board representing over 730 individual Rye residents, who have signed petitions, to protect Rye water from the potential pollution and give support for the Planning Board to deny approval of the 421 South Road proposed major subdivision. The concerns include the proposed major subdivision lies 100 percent in the Wellhead Protection Overlay District and south of the Aquifer Protection Overlay District, which requires the same high standard for development. They are concerned about the *future water supply needs; increased flooding from development due to extensive existing wetlands; flow across the site and subsequent risk for pollution; the impact of bedrock removal on private wells and water quality; risk of pollution to public and private wells from septic and surface pollutants in perpetuity and impact to residents' safety and associated costs; impact of industrial and extensive drainage developments on the present semi-rural character of Rye due to a high amount of existing and new water on the site.* She continued that Rye's clean water is its greatest resource. As Mr. Tim Stone, from Stonehill Environmental, stated in discussion during the work session on February 8th, "It is not really known where the wells are drawing their water". She urged the Board of Adjustment to deny the Special Exception and waiver, to protect the groundwater quality on the site and on surrounding abutting land.

Dr. Barrett asked the Board if they had a question.

Member Hoyt noted that the road is relatively close to the outer edges of the vernal pool setback. He asked if the impacts are as detrimental at the edges, as it would be closer to the vernal pool, on the animals that live in the vernal pools.

Dr. Barrett explained that the further away from a vernal pool and a vernal depression, the better it is in terms of reducing impacts. Setbacks are determined by people, not by the ecosystem or the organisms that are living there. The further away from the center, the better it is, with less impact to the ground flow. Referring to the plan, he stated that this is probably going across the narrowest wetland spot and a bigger chunk of the setback. He does not think anything is gained one way or the other. He understands that the mitigation is to restore that area back to wetland. He noted that he has been involved in mitigation and restoration. Sometimes the impacts of doing the restoration are worse than what was there. What is there now was logged; however, natural systems will evolve and come back. Eventually, it will be like it was before the logging, unless there is soil erosion.

Referring to the minutes of the ZBA May 3rd meeting page 25, Chair Weathersby noted that Mr. Gove states, "Vernal pool creatures like to lay their eggs in the pool and leave to the upland areas. They move back to the vernal pools in the spring. They will have the ability to move in any direction that they want to."

Carol Menard, 495 South Road, stated that the color map provided to the Board of lot 2, illustrates a four-sided encircling and confinement of vernal pool and buffers by the developer.

1. Temporary logging road – The permit for this road expired in the spring of 2015. Abutters were informed by the Town Official that the road would be removed in the spring of 2015 and it is still there. On the first site walk, Member Lord (Planning Board Member) picked out chunks of recycled asphalt from the logging road. It was a filled road that was not using natural products and has been in existence for two years.
2. Septic plume, surface and storm water runoff from impervious surfaces on lot 1 into wetlands and vernal pools on lot 2. There are multiple ways the development is impacting the vernal pool on lot 2.
3. Road to get to the driveway – The arrows on the road that gets to the driveway drain into the vernal pool.
4. Driveway – The fourth man-made constructed border around the vernal pool.

Ms. Menard stated that essentially it is using the vernal pool as a detention pond. That is not the natural function of a vernal pool. The impacts start with the vernal pools on lot 2. This large and presently intact, naturally functioning wetland ecosystem continues to the extensive wetlands reaching to the Atlantic Cedar Swamp to the north, Bailey's Brook and ultimately to the Atlantic Ocean. The driveway crossing is located in a vernal pool and wetland buffer under jurisdiction of the Conservation District; secondly, in the Wellhead Protection Overlay District with great concern for the size and scope of the development and for the long term increases of susceptibility to pollution of groundwater, proximate private and public wells and flooding of land on the site and downstream of the site; and thirdly, south and proximate to the Aquifer Protection Overlay District, which shares the same concerns. Lastly, the driveway is located in the non-approved lot #2 of a 17-lot major subdivision. Attorney Loughlin states in the letter in support of the Special Exception for the ZBA that this application is not being filed simply to overbuild in an area of land for economic advantage, with the use of a driveway, with no significant impact to wetlands and buffers. She stated that with due respect to abutters and many concerned Rye residents who have spoken at this meeting, it appears to entirely be filed to overbuild an area of land for economic advantage. Discussion continues before the Planning Board on the possible need for variances, proposed road design ledge locations, wetlands and vernal pool locations and boundaries. Lots of things are still unresolved; designated leach area locations, drainage control measures and thus the actual lot locations. Lot 2 is not yet an approved lot. The abutters and concerned residents believe the driveway crossing is not essential to productive use of the land, as lot 2 represents just one of 9 lots, which the owner and developer are seeking approval for financial benefit. Most of the lots have wetlands and high ledge features, prohibitive to development. Even with the loss of lot 2, there are 8 other lots and more than a fair economic return.

Ms. Menard continued that maps submitted at this meeting, indicate a larger ecosystem than what has been presented to date. The increase in wetlands and buffers, introduced at this meeting, appear to indicate more impact to the driveway crossing on lot 2. Currently plans under the deliberation for the road and lot designs, are based on extreme drought conditions present in 2016. In sharp contrast, substantial increase in water was evident on the ground across the entire site during more normal rainfall conditions this spring. High water changes to the vernal pools and wetlands, and questions to determine the significance in increase in new water draining off the site, how it would impact the proposed road designs and also would be managed, were the main focus of discussion at the site walk held a week ago. The abutters remain concerned very much about pollution. In addition, some changes to configurations of other lots remain necessary and with adjustments potentially more suitable than violating the integrity of the vernal pool buffer on lot 2. She urged the Board of adjustment to deny the Special Exception and waiver for a driveway crossing through this valuable and long-standing ecosystem. The land under discussion has throughout the centuries, up to the latest logging operation in 2013, not been developed, likely influenced by extensive water and ledge. Rather, the land has provided benefit as forested

wetlands, with the only exception of the barn approximate to South Road. She asked the Board to protect the integrity of all wetlands and buffers on the site, as the Wellhead Ordinance provides, as well as economic and esthetic benefits of wellhead protection and drinking water production for all present and future Rye residents.

Chair Weathersby asked if her property abuts to the northwest.

Ms. Menard confirmed.

Chair Weathersby commented that at the site walk there was water flowing near the stonewall. She asked if she has water on her land that she feels are of the same issues of this property.

Ms. Menard stated that her property follows along the side of lot 2. Her property does not get wet until the straight area in the back. The section that they were standing on at the site walk along the logging road is the section that is proposed to be developed. There are no wetlands on the other side of the stonewall. All the water that was seen at the site walk was from South Road, through lot 1 and into lot 2 but that is not on her property.

Member Crapo commented that they have seen a couple of maps with different iterations of wetlands. The packet has certain maps from the applicant. He asked if the boundary of the vernal pools and wetlands have been peer reviewed. If the vernal pool received water from the development and became deeper or wider, would that be a benefit or problem? What would be the effects of that? Is it sure that the maps are accurate?

Chair Weathersby stated that all the maps being reviewed this evening are based on the maps by Beal's Associates who represents the applicant. She asked Planning Administrator Kim Reed if the wetlands and buffers are being peer reviewed.

Planning Administrator Reed replied that the Planning Board has done extensive peer review with experts that the Planning Board has hired through the applicant's escrow; Joe Noel, Mark West, Danna Truslow, as well as Sebago Technics.

Chair Weathersby asked if they have concluded that the wetlands for lot 2 are as represented by the applicant.

Planning Administrator Reed replied that according to Mark West he has no disputes with the Doucet Plans that were provided.

Member Crapo asked what would be the impacts to the vernal pools, if something in the development changes the water levels in the pools. Would a bigger pool make it better or make it worse?

Chair Weathersby stated that she will leave this to the soil scientist. She will first let the public finish and all these issues can be discussed. She asked for further comments from the public in regards to the application. She pointed out that the Board received a letter from the Conservation Commission and a rebuttal from Joseph Falzone.

***Please see attached – Rye Conservation Commission letter dated April 4, 2017
Joseph Falzone, Developer, response by email dated April 5, 2017**

Chair Weathersby asked the applicant to follow up on the public comments.

Attorney Peter Loughlin, representing the applicant, submitted exhibits to the Board; site development plans and information on rainfall events. He stated that prior to the last meeting, he sent out a letter with some photos. He would like to go through the photos with the Board.

- Photo A – View looking towards the logging road and where the crossing will be.
- Photo B – Shows the area of the existing logging road and where the driveway is supposed to be.
- Photo C – Shows the area where the crossing will be located.
- Photo D – Shows the surface water in the area of the crossing.
- Photo E – Looking at the crossing area towards lot 2.
- Photo F – View of the westerly direction, in the area of the proposed driveway.
- Photo G – Shows the proposed house site location.

He continued that this is not a pristine area. It is not an area that is overgrown with growth of any sort. It has been logged fairly heavily. It is not wetland. It is less than 200sf of wetland that is actually involved in this application.

- Attachment A - Shows the 100ft vernal pool setback marked in orange.
- Attachment B - Shows the wetlands in green and a different shade of green shows the 75ft wetland setback.
- Attachment C - Shows the overlapping of the two wetlands.
- Attachment D – Shows the location of the proposed driveway.

Attorney Loughlin stated that he is submitting a plan to the Board that shows the crossing is at the narrowest point in the wetlands and in an area, that has been previously disturbed. A photo shows a large flat rock. The area that needs to be restored starts near that rock. It measures about 2.5ft wide and goes up to about 15ft of wetland soils on the other end. The proposal is for a wetland crossing at this location, the narrowest point. At the previous meeting, a few of the Board members expressed concern about the flow that will come out of the vernal pool and whether it would create a larger wetland. Also, if some of the fill is removed, would that cause a greater flow of water? The answer is that there is no “flow” from the vernal pool. The vernal pool is a result of the high-water table coming up, creating a vernal pool and going down, which can then make a vernal pool disappear. Vernal pools are not primarily caused by surface water flowing into the vernal pool. The vernal pool has seepage. It is not a flow. In the area of the proposed crossing, on April 11th and May 24th, in his layman’s eyes he could detect no movement of the water; no seepage. May 25th, before the monsoon, there was some movement of water. The recent site walk was during the rain and there would have been water visible; flowing, moving on the surface. The question is what effect does the flow have? He noted that the wetland boundaries have been verified by Jim Gove, Soil Scientist, and the Town’s expert, Mark West. They have agreed this is the boundary of the wetlands. He stated that Mr. Gove has pointed out at previous meetings that the wetlands do not change because of a heavy rainfall or a drought. The wetlands are based on soil types, hydrology and vegetation.

Attorney Loughlin stated that the water in a 100-year storm event is 9.5 inches, per 24 hours. The 100-year storm event would raise the water level in the vernal pool and the area of the crossing by about 12 inches. It will flood either side of the wetlands and after a few days it will go back down. He continued that at the last meeting, Member Mikolaities asked, with respect to the crossing, how it is being made better. Member Mikolaities asked how the vernal pool is being protected. Jim Gove suggested that it be marked with “no disturb” signs. Mr. Gove also talked about the protections to protect the aquatic life that live in the vernal pool. In the April 6th letter from Mark West, he stated that there would “only be minor changes in the hydrology budgets of vernal pools 1 and 2”. The question of how high or how low the water will get in the vernal pools keeps coming up. The testimony from Mark West, in his April 6th letter, states that there will be no real change in the hydrology budget. His letter also states “there will be impacts to the terrestrial dispersal habitat of amphibians utilizing the pools. This includes the proposed

driveway on lot 2, which is less than 50ft from vernal pool 1. Construction of houses, driveways and lawns, reduce the upland forest habitat, which vernal pool amphibians utilize most of the year. Permanent protection of the remaining forested buffers to vernal pools 1 and 2 is critical to their future function, as they will be surrounded by houses.” He reiterated that Mark West suggested a “no disturb” buffer. He noted that in the packets is language that is being submitted that the Board could use as a condition of approval to the application. The condition would go in a restrictive covenant or the deed. (He read the suggested wording.)

Member Crapo asked if there would be a fence.

Attorney Loughlin replied no. Right now, trees in the buffer cannot be cut over 4.5” but everything else can be cleared out and it can be kept as a field. He commented that there is probably no other property in Rye that is subject to the kind of restrictions that are being proposed for this buffer area.

Referring to the “no disturb” buffer that is being suggested for the vernal pool and the wetland areas, Chair Weathersby asked if they were the same in geographic scope as the vernal pool buffer and wetland buffer in the zoning ordinance.

Attorney Loughlin replied yes. The buffer areas are the same but the limits are drastically more severe. He continued that he submitted to the Board a booklet that was put out by The Natural Resource Conservation Service, that talked about protecting wetlands. It recommended that there be a process for granting relief from the buffers and wetlands. It recommended a special exception. Rye has had a Special Exception provision for wetland buffers and wetlands since the 1990’s, when wetland protection was first adopted. (He reviewed the criteria for granting the special exception.)

- **Granting the Special Exception would not be injurious or detrimental to the neighborhood** – He explained that if the Special Exception is granted, there would be a single-family home on a 3.77-acre lot, with 2.5 acres of upland. The area for the house is approximately 1 acre, which is upland that is not in a buffer. The Rye Town Meeting in March changed the ordinance to clarify what the requirements are for a special exception.
- A Special Exception may not be granted;
 - (1) **Unless it is essential to the productive use of the land.** - He stated that in terms of realistic productive use, it would be for a home site; for a single-family home.
 - (2) **Unless it can be shown by a N.H. Certified Wetland Scientist, to the maximum extent practical, such construction will have the least possible impact upon the wetland.** – He noted that what they are proposing is consistent with this.
 - (3) **Unless it can be shown by a N.H. Certified Wetland Scientist that no alternative feasible route exists, which does not cross or alter wetland.** – He stated that to get to that acre plus of upland, a wetland buffer has to be crossed. There is no alternative route to get there.
 - (4) **Economic advantage should not be deemed sufficient reason for the above-mentioned exception.** – He explained that each of the three requirements must be judged in terms of economic advantage alone. Is economic advantage alone the only basis for satisfying those requirements? He would suggest that the driveway is essential for the productive use of the land, regardless of any economic consideration. If the land is going to be developed, there has to be a driveway. It is essential for the productive use of the land. He pointed out that economic advantage alone does not drive the requirement that there be the least possible detrimental impact. He continued that no feasible route exists that does not cross or alter a wetland.

Attorney Loughlin stated that all the conditions for Special Exception have been met and satisfied. He commented that every time the Board grants a variance, Special Exception or wavier, there is some type of economic impact. He thinks that provision has to be read in a common-sense way.

- *The granting of the Special Exception is in harmony with the general intent and purpose of the zoning ordinance.* - He stated the purpose section of the ordinance was revised in March and several new sections were added. What is being proposed is consistent with all the sections, new and old.

Attorney Loughlin stated that the Chisholm Family has the right to use their property as any abutter. That is the right to use if for a single-family home development. Like every application before this Board, it is a balancing test between the rights of the land owner to use their property and concerns that were expressed.

*Chair Weathersby noted that the Board will not be getting to other applications at this meeting. She asked for a motion to continue the applications pending on the agenda.

Motion by Shawn Crapo to continue the applications of Berry, Place, Benyon, Carter and Fairchild to the June 21st meeting. Seconded by Gregg Mikolaities. All in favor.

The Board recessed for a five-minute break.

Chair Weathersby reconvened the meeting at 9:47 p.m. and opened to the Board for questions.

Member Crapo stated there have been several references to the lot and the productive use of the lot. As it is noticed, the lot is Tax Map 4, Lot 31. The application has been “honing in” on proposed lot 2. The lot lines do not exist until the whole Planning Board process is approved. Part of the way that lot 2 would exist is with this variance. In a grander scheme, it is a larger parcel with its potential usage being one configuration proposed and that configuration lies on this variance. To say the only way to use lot 2 productively is with this variance, in his mind is not correct because it is looking to use lot 31. It is being said that one way to make it productive is by creating lot 2 as proposed.

Attorney Loughlin stated that what he should have said is it is an area on Tax Map 4, Lot 25, (sic). An area that is a couple of acres on the westerly side of the wetlands. He continued that right now it is not a lot. Town Counsel Michael Donovan stated that it needs to go to the Board of Adjustment and ask for relief before it will be considered at the Planning Board level.

Member Crapo stated that a couple of years ago the logging road was supposed to come out. Wetlands will start regenerating themselves when they are properly restored. The owner of the lot, who is not the applicant, neglected to do that. This applicant is now asking to “compound on” the neglect and has used the fact that it is still in its neglected state to say that it is a variable change from this state going forward. In reality, none of the wetland analysis and measurements were able to be taken from what should already have had two years of restoration. Part of the argument is that it is already disturbed. It is compounding the owners neglect and saying it is a lesser impact, if it had been properly restored would it be the same?

Attorney Loughlin explained that if it had been properly restored they would have been before the Board with the same argument because that is the narrowest spot to cross the wetlands. The trees would still have been removed. The results of having a logging road would still be there. He reiterated that this is the narrowest spot and would have the least impact. It is the place that makes the most sense to cross the wetlands.

Chair Weathersby asked if he is saying that even if the logging road had been properly restored the wetlands delineation would be exactly the same as being presented.

Attorney Loughlin replied yes.

Chair Weathersby noted that Mr. Gove is nodding.

Attorney Loughlin stated that this was a question that came up at the Planning Board.

Chair Weathersby asked if the owner who allowed the logging the same owner of the parcel presently.

Attorney Loughlin replied that it is the Chisholm Family Trust.

Chair Weathersby clarified that Harbor Street Limited Partnership has the parcel under agreement with the Chisholm Family.

Attorney Loughlin confirmed.

Member Mikolaities pointed out that the Board has received three different exhibits from abutters. There is an exhibit from Mr. Siener regarding change in wetland and vernal pool limits. He asked for a representative of the applicant to speak to the limits.

Christian Smith, Beal's Associates, explained that the vernal pools and wetlands were based on field sketches by Jim Gove, Wetland Scientist. Exhibit 1 from Mr. Siener was not done by field survey equipment. It is simply a hand sketch.

Member Mikolaities stated that his second question has to do with the submittals from Mr. Ross regarding the seasonal high-water table. He asked if the home is going to have a full basement.

Mr. Smith explained that they have gone through an iteration of revising the lot development plans. At which time, the review engineer requested that sill and slab elevations be put on the plans. (He submitted those plans to the Board.) He noted that the slab elevation is at 70, which is roughly existing grade. He believes Mr. Ross's sketch shows it at 64 or 63, which is not correct. The house will have a full basement. The bottom will basically be a slab on grade.

Member Crapo commented that there will be fill up around it.

Mr. Smith confirmed.

Chair Weathersby asked if the septic will also be raised.

Mr. Smith explained the septic has to be 4ft above the seasonal high-water table.

Member Mikolaities stated there is a third exhibit with the septic plume and the road drainage. He asked for someone to speak to the septic and the potential impact on the vernal pool.

Member Driscoll asked if a slab is going to be put at existing grade will that mean that there will be 4ft of fill?

Mr. Smith replied yes.

Member Hoyt asked if the house is going to sit up about 6ft.

Mr. Smith replied yes. There is a 76ft contour to the north. Easterly, it is almost at an existing 70ft contour. On the southwest side, it is about 71ft.

Member Crapo commented there will be more water heading back towards the resource.

Mr. Smith stated that they ran a surface water hydrology analysis on this because Danna Truslow asked that specific question in regards to the vernal pools. The difference with the development was under an inch with the 2-year storm, a different modification with the 10 and under a 2-inch difference in surface elevation in the pools after a 50-year storm. The elevation in the pools due to a rain surge changes very little.

Member Crapo stated that he is talking about contaminants. There is a drainage vector going right down the driveway towards the vernal pool. Right now, the vernal pool is groundwater that bubbles up that is already filtered by the ground. Now, more surface water with contaminants is going to be introduced into the buffer.

Mr. Smith stated that everything that comes off the driveway heads to the north and east. (He reviewed the flow on the plan for the Board.)

Chair Weathersby asked if the driveway will be paved.

Mr. Smith replied that it is intended to be paved.

Chair Weathersby asked if the house design and roof pitch is known.

Mr. Smith explained they have very cursory architectural schematics.

Chair Weathersby asked if the developer is intending to build the houses or just sell the lots with the owners being able to build what they chose.

Mr. Smith explained that he does not think the owners will be able to throw any particular design in there because the individual lot plans are going to be conditioned upon Planning Board approvals.

Chair Weathersby clarified that roof slopes are designed to go a certain way and that will be how they will go.

Mr. Smith agreed.

Mr. Falzone stated that he controls the construction of the house from start to finish.

Referring to Member Mikolaities' question about the septic plume, **Tim Stone, Stonehill Environmental**, stated that this was addressed at the Planning Board. (He submitted documentation to the Board that specifically addresses this question.) The systems that are being installed are septi-tech Knight Systems, which are about the most advanced treatment as possible. The data that is being seen from the operation of these systems is getting the concentrations of nitrate down to 10 milligrams per liter. Typically, septic systems will charge 40 to 50 milligrams per liter. This will be starting at 10 milligrams per liter at the leach field. The effluent goes from the tank, this is where the 10 milligrams begins, to the leach field where there will be additional treatment, sent down to the water table and start flowing north. Groundwater does not flow onto abutting properties. There have been almost a dozen water measurements which show that it flows to the north. In looking at the plan, it seems the plume is running underneath towards the vernal pool; however, it is actually running under the vernal pool because of the recharge from rainfall that falls on ground surface. As the plume is moving north, there is additional clean recharge recharging the groundwater table which depresses the plume.

Member Mikolaities asked what will be happening on lot 2.

Mr. Stone explained that the plume will be below the vernal pool because the plume gets depressed as it is moving north. He continued that with respect to lot 2, the flow is going to be flowing towards the north. If the system were to fail, there possibly could be some radial flow from it. These systems are the most advanced systems there are on the market.

Chair Weathersby stated that to the north there are also other wetlands and wetland buffers.

Mr. Stone stated that as it is moving north the surface water and recharge is depressing the plumes over time. The concentrations of nitrates are going to diminish very quickly downgradient.

Chair Weathersby asked what effect the water will have on the Aquifer as it descends.

Mr. Stone explained it will travel north towards the wetland boundary at the north end of the property. Ultimately, it will be captured by the flow which is heading northeast along the brook to Locke Pond. At the same time, there is additional denitrification and trace contaminants which are getting tied up in the soil or the plants, if it even gets to the surface again. He continued that there has been a lot of questions about whether this could impact the supply wells to the northwest. He has said at the Planning Board meeting that the Wellhead Protection Area is actually an arbitrary radius set based upon the flow of the well. It is not based upon where that well is drawing water from. There is quite a bit of extensive data that has been established that indicates the vast majority of the water is being drawn from the northeast and southwest on fractural lineaments that have been defined by pump tests by the Water District. There is a very good idea of where this water is coming from; the vast majority of it. The likelihood of anything being pulled into the supply wells from this site would be extremely remote. It would be very rare that the wells would pull upgradient against groundwater flow to those wells. The second part is that there will not be significant contaminants from the site of any significant degree. There are 250 other septic systems in the area that could contaminant the supply wells. This site is the least of the problems because of the advanced treatment. Every home in the development will have the advanced treatment system.

Chair Weathersby asked what other studies have been done in regards to other potential contaminants, road salt, gasoline drippings, etc., for the use of this driveway.

Mr. Stone explained that gasoline drippings and things like that are considered incidental contamination. It's small and petroleum products essentially get biodegraded. The microbes that are in the groundwater and soil will biodegrade the small amounts of petroleum contaminants. The septic systems that are being proposed have circulating systems. Not only do they reduce the nitrogen, it will also cause reduction of other contaminants. He continued that road salt is a challenge. It is something the developer is committed to say that the development will be a "no salt" development. There is going to have to be enforcement. He reiterated that road salt is a challenge in New England. There is a lot of road salt getting into the drainages. For this site, the developer is committed to no road salt on the roads and it will be part of the homeowner's association, along with the use of low nitrate fertilizers.

Member Driscoll stated there was discussion earlier about how the vernal pool was more seep than flow. He asked for this to be explained.

Jim Gove, Gove Environmental, explained the vernal pool is a seasonal ponding that takes place. Some seasons there may be 2ft. In a wet season, there might be 4ft. The reason why the vernal pool boundary is not the entire wetland is because there has to be a certain depth to the water. The critters do not lay their eggs in places where there is shallow water. They know instinctly that if they lay their eggs in shallow water, it is going to dry up and the eggs will die. The reason why the vernal pool is interior to the wetland is because a lot of the areas on the outside are too shallow. As the vernal pool fills up, there is a place where it spills over. It is essentially a relief valve. That is why sometimes it flows and sometimes it just sits there.

Member Hoyt commented that a bridge is going to be expanded over the natural relief valve.

Mr. Gove stated that it is an expanded concrete bridge over the natural relief valve. Essentially, it is a narrow little channel that is the relief valve for this vernal pool.

Chair Weathersby stated that she was on the property and water was rapidly flowing in this area. In the rest of the area, the water was spread out and gently flowing. In the area where the bridge is going, it was probably 20ft of a wet, boggy area. She commented that the bridge that is being proposed is 17ft long. She continued that there is a certain area defined as wetlands based on the soil. There are other areas that get wet due to rainfall. If the bridge is only 17ft long but the wet area goes out to 20 or 24ft, how will this affect the bridge and the driveway?

Referring to a photo, Mr. Gove stated that the photo is looking to the north. There are two flags that mark the other end of the triangle. The rock marks the narrow point and there are two ends of the triangle. It can be seen that water goes out beyond it. That area is in fact not wetland. He pointed out that Mark West, Joe Noel and himself have done numerous holes through that area and it is known that it is not wetland.

Member Crapo clarified this is the area where the footing for the bridge will be.

Mr. Gove confirmed. He continued that the fill that is going to be removed is outside of that channel. The pinch point of fill is allowing the water to go over into the upland. Once that area is restored, there will not be water in the uplands.

Member Driscoll clarified that with the restoration the elevation is not going to change.

Mr. Gove confirmed.

Member Driscoll asked the elevation. He asked if the 71 on the plan is representing the top of the roadway.

Mr. Smith replied that the elevation is just under 68.

Chair Weathersby asked how much fill is being brought in for the driveway and the house.

Mr. Smith explained they have not run calculations on fill for the individual lots.

Chair Weathersby stated that a variance is needed to build the driveway. She asked why they are not asking for the variances relative to building the driveway; to bring in fill to the wetland buffer. She feels like the Board does not have all the information.

Attorney Loughlin stated that they are asking to disturb the wetlands buffer. If they are granted the Special Exception to disturb the wetlands buffer, it can be disturbed with the placement of fill. The ordinance does not distinguish between the ordinance of the wetlands or the wetlands buffer. They do not anticipate additional approvals being needed. They are addressing where they would like to disturb with the construction of a roadway.

Member Crapo noted that 301.8B (1) is needed for surface alteration with the addition of fill and dredging.

Member Mikolaities asked what the unintended consequences will be with blasting, underground utilities and the flow to the vernal pools. He asked about construction management sequencing. The Board keeps focusing on this 200sf wetlands crossing when it is really talking about the 44,000sf of development.

Mr. Stone explained there will be no blasting on the site. It will be rock hammering or physical ripping of rock to do the work on the site. This was done to avoid any short-term nitrate contamination from blasting. The trenching for utilities, removal of bedrock and changing of grade, will potentially result in some very localized changes in groundwater flow, except in this case there is such strong overall water flow to the north. There may be little localized influences but overall the flow will be to the north and the northeast. It is the same with the septic. Once the leaching hits the water table, the overwhelming influence will be the groundwater table carrying it off to the north. He noted that they have gone through this in a lot of detail.

Member Driscoll asked for an explanation of the drainage easement that is far away from the proposed house on the other side of the vernal pool.

Mr. Smith explained the drainage easement for the Board.

Member Driscoll asked if this would have any effect on the vernal pool, the wetlands or the wetland setbacks.

Mr. Smith replied it should not.

Chair Weathersby commented that there was mention that there were letters from the Natural Heritage Bureau regarding species of concern. She asked if any species were identified in this development.

Mr. Gove replied not in this area. There were species of concern that were located at Cedar Swamp and the much larger wetland area. It was well away from this site.

Member Driscoll asked how this is determined.

Mr. Gove explained that Natural Heritage determines this. There is a portion that is not owned by the Chisholm Family that is directly adjacent to the White Cedar Swamp, which is monitored and protected. The scientists have also been over to the Chisholm property, as well, to see the species that are utilizing the Cedar Swamp. These are identified species that have been recorded and provided to both N.H. Fish and Game and the Natural Heritage Bureau. He continued that on the lot as a whole, the species of concern are way to the back.

Member Crapo stated that earlier Dr. Barrett spoke about a survey. He asked if a survey has been done.

Mr. Gove replied no. He explained that they went out and identified what was available for egg masses within the vernal pool. The majority of the egg masses were not of the salamander type. They were the wood frog type. He continued that they put on waders and waded through the water. The egg masses are actually floating. The wood frog eggs are green and are very distinctive. The salamander eggs are a little bigger than a golf ball and are made of a hard mass. He reiterated that the majority of the eggs found were wood frog eggs and not salamanders.

Member Crapo asked if there is any detriment to the eggs if the vernal pool was to get deeper.

Mr. Gove replied no.

Member Driscoll asked how they came to the conclusion that they weren't going to look explicitly in to animals of concern for the presentation.

Mr. Gove explained they do not conduct that kind of standard unless a specific species has been found. A person does not do an analysis, transect or grid, which costs up to \$20,000., when a Blue Spotted Salamander has not even been found in the area. That kind of analysis is not done for every single vernal pool and certainly not for a vernal pool of this size, which has a limited number of egg masses.

Member Driscoll commented that someone would have to initially look for those species in order to find them. It seems like that work has not been done.

Mr. Gove explained that when they are out there and come across one of those species, it is recorded. He noted that they have been out there numerous times and have not seen it.

Member Crapo pointed out that the species have never been found because no one has ever looked for them. This is land that has been untouched for years and years.

Mr. Gove stated that in the Atlantic White Cedar Swamp it is known there are a bunch of salamanders and wood frogs in that area, which have been extensively looked at by other scientists that are monitoring the area. If they had found a Blue Spotted Salamander, it would have shown up. If it had shown up, it would've been known that there was a need to look further.

Chair Weathersby asked if was stated earlier that species of concern were found.

Mr. Gove pointed out that it was a butterfly that was found.

Chair Weathersby stated that one thing that has to be proved, through the wetland scientist, that there is no alternative feasible route which does not cross or alter a wetland. Between the third and fourth lot, on the left-hand side of the road, it is not affecting a wetland. She asked what the issue would be with that route.

Mr. Gove stated that the Board needs to remember that they are not having any direct wetland impact. This is being spanned. The area between the lots is still fairly wooded. It would cause cutting of a lot more trees. There would also be more side impacts because of the elevation. The area being proposed has been impacted, has a road through it so there will be very little tree cutting, and is pretty much at grade.

Chair Weathersby asked for the square footage that is proposed to be affected.

Mr. Smith explained the total wetland buffer impact proposed is 3510sf. The vernal pool buffer segment of that is 2900sf.

Chair Weathersby clarified that it is being said that no wetlands are being impacted because it is being spanned.

Mr. Smith confirmed.

Chair Weathersby asked for an explanation of the process for construction of the bridge.

Mr. Smith explained the footings are pre-cast and will be placed on either side of the wetland. Those will be craned into place and leveled. Each bridge section will be placed, tightened down and synched together with bolts.

Member Driscoll asked if the vernal pool will be impacted during the process of the installation.

Mr. Smith replied no. It is all downstream of the pool.

Member Driscoll asked if there would be a silt fence on the downhill side.

Mr. Smith commented they would probably not use a silt fence in this application. They would probably use coconut logs or a silt sock, which is mulch filled tubes that would be run around the entire area of disturbance near the edge of wetland.

Member Crapo asked if the water flow will need to be stopped in order to do the footings.

Mr. Smith explained the intent is to do this during the driest portion of the season.

Chair Weathersby asked what type of equipment will be used.

Mr. Smith explained there will be a crane, flatbed to carry the concrete pieces and a backhoe.

Chair Weathersby asked if the driveway will be able to support the equipment.

Mr. Smith explained the initial gravel for the road will probably be down before the equipment goes out. The width of the driveway is 12ft. The width of the concrete span is 16ft.

Chair Weathersby asked if a driveway with a width of 12ft will accommodate a crane and flatbed truck.

Mr. Smith replied yes.

Chair Weathersby closed the public hearing at 11:07 p.m. She explained that the applicant's first request is for a Special Exception to construct a driveway with a 17'x16' wetlands crossing 51ft from the vernal pool where a 100ft setback is required; the vernal pool buffer where a 100ft buffer is required; and 3,510sf total wetlands buffer disturbance. For the special exception, the Board needs to look at Section 301.7 B, which states, construction of roads and driveways requires a Special Exception from the Zoning Board of Adjustment, which may be issued where it is shown that due to existing conditions no alternative route is feasible, in addition to meeting requirements for special exception. Also, Section 301.7 F says the Special Exception may not be granted (1) unless it is essential to the productive use of the land not so zoned, (2) unless it can be shown by a N.H. Certified Wetland Scientist that to the maximum extent practicable such construction shall have the least possible detrimental impact on the wetland, (3) unless it can be shown by a N.H. Certified Wetland Scientist that no alternative feasible route or area exists which does not cross or alter a wetland, and (4) economic advantage alone shall not be deemed sufficient reason for the above mentioned exceptions. She continued they also need to meet Section 701.3, where it needs to be determined whether it would be injurious or detrimental to the neighborhood and whether it is in harmony with the general purpose and intent of the zoning ordinance in accordance with the general and specific rules contained therein. She stated that the Board is familiar with the variance criteria that needs to be met, which is the second part of their request if they are not granted the special exception.

Member Crapo noted that they have not presented for the variances yet.

Attorney Loughlin confirmed.

It was agreed that the Board would consider the Special Exception first and the applicant would then present the case for the variance, based on outcome of the vote for the special exception.

Member Mikolaities stated that it is a much-improved submission. There are a lot of interesting public comments and that makes for a better application. The Planning Board has some good quality consultants working for them. It sounds like the application is on track. There are some conditions that he would like to see if it is approved. He does not have a problem with the request. He reiterated that they did a really good job with this presentation.

Member Hoyt stated that he feels comfortable with the science to make the road. He does not feel comfortable with the detriment it may have to the wetlands. It is so tightly inside the wetlands. He is struggling between those two.

Member Driscoll stated he is having issues with 301.7 F (1) and (3), detrimental impact on the wetland and economic advantage alone shall not be deemed sufficient for the exception. He personally has had a hard time trying to isolate the lot that does not exist as the lot that is being proposed to the Board. Looking at this lot alone, makes it a little easier to pass on the third one. The minimal detrimental impact on the wetland is the one that he is really struggling with.

Member Crapo stated that he feels that a large driver is that these lot lines are not set in stone. He cannot get past that it is not for economic advantage. These lots could be laid out differently and maybe there would be the same economics because potentially larger lots are worth more. He thinks there is another alternative in trying to get to this upland but he does not see that they have to get to this upland to make anything work. To get lot 2 in its present configuration, the driveway would need to be there; however, it could be farther away from the protected resource or not be done at all. He cannot see "shoehorning" a house in where there needs to be no cut and other restrictions. He cannot see that it would not be detrimental if it needs that much adaption.

Chair Weathersby stated that she struggles with the "economic advantage alone shall not be deemed sufficient reason". This is 59 acres of beautiful land and its being configured in a certain way to have the houses and roads in certain places, which is sometimes dictated by water and ledge. However, this little island of upland is 2 acre that is not in a buffer or wetland. The reason why this driveway and crossing needs to be done is so a house can be built there and they can sell this as another lot. She continued that she has concerns about the wetland and the Town Aquifer. The intention of the applicant to protect what is there; however, she is concerned with 20 or 30 years down the road when things are not enforced quite as carefully. She also struggles a little bit with 301.7 F (1), essential to the productive use of the land not so zoned. The crossing is essential to get a house to that "island" but the land is the bigger parcel. She struggles with the fact that the lots do not really exist yet. What is the land? What is the parcel? To her right now, it is a bigger parcel than just lot 2.

Member Driscoll asked why they are not considering 301.8 B.

Chair Weathersby stated that they should be. Perhaps, this will be included in the variance request.

Member Crapo stated that the simple presence of a driveway is changing nature. Things could be laid out differently. There are lots in the proposed subdivision that are much larger. There is not even a scheme

of having certain size lots. It then bounces back to the economic advantage of trying to get the last two acres out of 40 or 50 acres.

Member Dibble stated that the owners and developers have some right to develop their property the way they want to. He is inclined to be open to the notion that if this is upland property, and a house can be put on it, they can put a house on it. It is hardly the Board's job to balance the rights of the owners with the rights of the owners of the zoning ordinance and the Town. He is not able to see that this particular corner of the development is not detrimental, with the strain of bridging the driveway, the fill and all the things that need to go into building a house on this piece. At the end of the day, the proposed development of this lot is detrimental to this corner of the development.

Member Crapo stated there is a reference to "so zoned" but that is single residence. Single residence is currently on the whole parcel, until it becomes a subdivision. Right now, lot 2 does not exist in order to be analyzed. He gives less weight on building on these uplands because there is a larger parcel is being parsed out.

Chair Weathersby stated that she would take issue with the first statement that the developer, or anyone, has the right to build on their property the way they want. That is the whole purpose of zoning.

Chair Weathersby called for a poll vote on each of the factors for a special exception:

(Applicant has the burden of proof):

- 1. Due to existing conditions, no alternative route is feasible, in addition to meeting the requirements for a special exception:**

Gregg Mikolaities – Yes
Shawn Crapo – No
Charles Hoyt – Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

- 2. Section 301.7 F, Special exceptions may not be granted**

- (1) Unless it is essential for the productive use of the land not so zoned:**

Gregg Mikolaities – Yes
Shawn Crapo – No
Charles Hoyt – No
Patrick Driscoll – No
Patricia Weathersby – No

- (2) Unless it is shown by a N.H. Certified Wetland Scientist that to the maximum extent practicable, such construction shall have the least detrimental impact upon the wetland:**

Gregg Mikolaities – Yes
Shawn Crapo – No
Charles Hoyt – Yes
Patrick Driscoll – No
Patricia Weathersby – No

- (3) Unless it can be shown by a N.H. Certified Wetland Scientist that no alternative or feasible route or area exists that does not cross or alter a wetland:**

Gregg Mikolaities – Yes
Shawn Crapo – No
Charles Hoyt – Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

- (4) Economic advantage alone shall not be deemed sufficient for the above-mentioned exception:**

*(The Board agreed to not do a specific finding on 4. Chair Weathersby asked the Board members to factor into their decision-making process whether economic advantage alone affected their decisions. She asked if anyone wanted to change their votes. All members were fine with their votes.)

3. Section 701.3:

- (1) Would granting the Special Exception be neither injurious or detrimental to the neighborhood?**

Gregg Mikolaities – Yes
Shawn Crapo – No
Charles Hoyt – No
Patrick Driscoll – No
Patricia Weathersby – No

- (2) Would granting the Special Exception be in harmony with the general purpose and intent of the zoning ordinance, and in accordance with the general and specific rules contained within the zoning ordinance?**

Gregg Mikolaities – Yes
Shawn Crapo – No
Charles Hoyt – No
Patrick Driscoll – No
Patricia Weathersby – No

Motion by Shawn Crapo to deny the request for a Special Exception for Tax Map 4, Lot 25, for Section 301.7 B, to construct a driveway as presented and discussed. Seconded by Charles Hoyt. Vote: 4-1. Opposed: Gregg Mikolaities

Chair Weathersby noted that the decision will be final once the Notice of Decision is drafted and approved by the Board.

5. **Harbor Street Limited Partnership of 7B Emery Lane, Stratham, NH for property owned at 421 South Road, Tax Map 4, Lot 31**, requests a Variance from Section 301 for property located at Tax Map 4, Lot 25, to permit a driveway within the following: (1) a 17'x16' wetlands crossing 51ft from a vernal pool where a 100ft setback is required; (2) 2,900sf within the vernal pool buffer where a 100ft buffer is required; (3) 3,510sf within the wetlands buffer where a 75ft buffer is required. **Property is in the Single Residence District. Case #14-2017.**

Motion by Shawn Crapo to continue the variance request of Harbor Street Limited Partnership to the June 21st meeting. Seconded by Patrick Driscoll. All in favor.

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

- **Application withdrawn.**

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

- **Continued to the June 21st meeting. (See motion above.)**

8. **Carmen & Katherine Place for property owned and located at 11 Fairhill Ave., Tax Map 20.2, Lot 96**, request Variances from 603.1 for expansion of part of the existing non-conforming structure; from Section 204.2C for an addition 22' from the front boundary of Fairhill Ave and a garage 21.6' from the front boundary of Eagle Rock Road where 30' is required; and from Section 204.3B for an addition 16.6' from the side property line where 20' is required; and from Section 304.5 for dwelling coverage where 11.7% exists, 17.1% is proposed and 15% is allowed; from Section 301.8B (2) for a septic tank 65' and a leachfield 62.3' from wetlands where 75' is required; and from Section 202.5 for a leachfield setback of 14.4' of rear property line where 20' is required. Applicant requests relief from the Building Code Section 7.9.2.2 for a septic tank that is 65' and a leachfield that is 71.4' from wetlands where 75' is required. **Property is in the General Residence, Coastal Overlay District. Case #17-2017.**

- **Continued to the June 21st meeting. (See motion above.)**

9. **Charles & Lindsay Beynon of 362 Main Street, Unit 2, Charlestown, MA, for property owned and located at 30 LaMer Drive, Tax Map 13, Lot 44, request Variances from Section 603.2 to tear down an existing building and replace with new; and from Section 301.8B(1) and 301.8 B(7) for a driveway 56' from tidal marsh where 100' is required; and for a building 63.8' from the tidal marsh where 100' is required; from Section 203.3B for a building 15.2' from the side property line where 20' is required; and from Section 203.3C for a building 35.2' from the front property line where 40' is required. **Property is in the Single Residence District. Case #18-2017.****
- Continued to the June 21st meeting. (See motion above.)
10. **Stephen & Adela Carter for property owned and located at 620 Wallis Road, Tax Map 16, Lot 104, request Variances from Section 203.3A for a shed 10' from the rear property line where 30' is required and from Section 203.3B for shed 10' from the side property line where 20' is required. **Property is in the Single Residence District. Case #19-2017.****
- Continued to the June 21st meeting. (See motion above.)
11. **Glenn Walker & Elizabeth Fairchild for property owned and located at 531 Brackett Road, Tax Map 17, Lot 47, request a Variance from Section 510.3 to allow for an 8ft fence where 6ft is allowed. **Property is in the Single Residence District. Case #20-2017.****
- Continued to the June 21st meeting. (See motion above.)
12. **Richard F. Carey on behalf of Theresa Carey & Richard Carey Revocable Trust, Theresa Carey & Richard Carey Trustees, 11 Robandy Road, Andover, MA, for property owned and located at 11 Surf Lane, Tax Map 8.4, Lot 71, request Variances from Section 603.1 for expansion of a non-conforming building; Section 204.3C for addition of second floor 11' +/- within the front boundary where 13' exists and 22.2' is required; from Section 204.3C for an outdoor shower within the 22' Breakers Road front boundary; from Section 204.3B for addition within the side boundary 8.6' where 8.6' exists and 20' is required; from Section 304.5 for building coverage of 19.1% where 16.8% exists and 15% is allowed; from Section 500.2 for two (2) parking spaces where none exist and from Section 500.3 for the location of the parking spaces located within the front yard. **Property is in the General and Coastal Overlay Districts. Case #21-2017.****
- Requests a continuance to the July meeting. (See motion above.)

Adjournment

Motion by Shawn Crapo to adjourn at 11:41 p.m. Seconded by Charles Hoyt. All in favor.

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

Respectfully Submitted: Dyana F. Ledger

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

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

Property:

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

Application case:

Case # 02-2017

Date of decision:

June 7, 2017

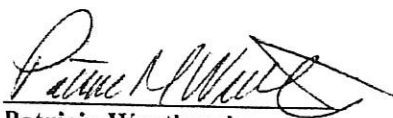
Decision: Upon rehearing for the sole purpose of better specifying the Board's reasons for denying the applicant's variance requests on March 1, 2017, the Board incorporated the record from the March 1 hearing of this matter into the June 7, 2017 rehearing in its entirety and restated its decision as follows:

The Board unanimously denies the applicant's request for Variances from the following sections:

- Section 204.3F for lot #1 to have 41,395sq. ft. of lot area;
- Section 204.3F for lot #2 to have 31,121sq. ft. of lot area;
- Section 204.3F for lot #1 to have 38.86' of frontage;
- Section 204.3F for lot #2 to have 51.92' of frontage; and
- Section 202.13 for a lot with less than 30,000 sq. ft. of contiguous upland soils

finding that granting the variances would result in:

- diminution of the property values of surrounding properties;
- overcrowding of the subject property and the neighborhood;
- adverse changes in the existing character of the neighborhood; and
- inadequate lot frontages for proper planning, safety and aesthetics.



Patricia Weathersby,
Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see Article VII, Section 703 of the Town of Rye Zoning Ordinance. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Manuel & Carol Barba

Property:

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

Application case:

Case # 04-2017

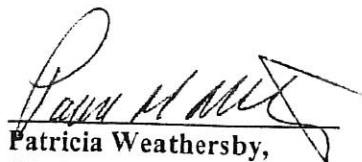
Date of decision:

June 7, 2017

Decision:

The Board voted 4 to 1 to deny the applicant's Administrative Appeal from the Building Inspector's 11-1-2016 Notice of Violation, finding no error in such Notice of Violation for the following reasons:

- (1) A majority of the Board found that neither the use nor the structure of the second dwelling on the lot was "grandfathered" and therefore the dwelling and its use are not exempt from present zoning regulations;
- (2) A majority of the Board found that the Town was not estopped from asserting that the second dwelling was illegal;
- (3) The Board unanimously found that the second dwelling lacked an individual sewerage disposal system as required by Rye's Building Code and New Hampshire law; and
- (4) The Board unanimously found that the existing dwelling and associated effluent disposal system were located within the wetlands buffer and prohibited by Rye's Zoning Ordinance.


Patricia Weathersby,
Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see Article VII, Section 703 of the Town of Rye Zoning Ordinance. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Manuel & Carol Barba

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

Application case: Case # 06-2017

Date of decision: June 7, 2017

Decision: The Board unanimously voted to deny the applicant's request for a Variance to Section 203.3E for a dwelling that is approximately 300 sq. ft. where 960 sq. ft. is required.

The Board unanimously voted to deny the applicant's request for a Variance to Section 202.4 for a second dwelling on one lot where one per lot is allowed.

The Board unanimously voted to deny the applicant's request for a Variance to Section 301.8 B (1) & (7) for a second dwelling within the 75' wetlands buffer.

The Board unanimously voted to deny the applicant's request for a Variance to Section 301.8 B (1) (2) & (7) for a septic system within the 75' wetlands buffer.

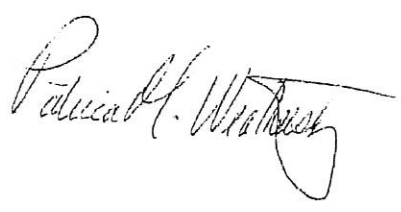
The Board unanimously voted to deny the applicant's request for a Variance to Section 301.8 B (1) for a driveway within the 75' wetlands buffer.

The Board unanimously voted to deny the applicant's request for a Building Code Relief from Section 7.9 for a second dwelling not connected to an individual sewerage disposal system.

The Board found that such requests failed to satisfy the criteria for granting variances based upon the following:

1. The dwelling is of a size that is far below all standards for dwellings and accessory dwellings in the Zoning Ordinance;

2. The dwelling was enlarged and modified without building permits and does not meet present building and life safety codes;
3. A second dwelling on the lot is contrary not only to the zoning ordinance but the spirit of the original Hunter's Run subdivision plan which stated that the single residence lot was not to be subdivided;
4. The dwelling's location completely within the wetlands buffer, 21' feet from the wetland and within the aquifer protection zone is reasonably likely to be detrimental to the environment and public water resources;
5. The driveway's location primarily within the wetlands buffer and within the aquifer protection zone is reasonably likely to be detrimental to the environment and public water resources;
6. The proposed septic tank to be located entirely within the wetlands buffer and within the aquifer protection zone is reasonably likely to be detrimental to the environment and public water resources; and
7. The proposed delay in installing the proposed septic system and allowing the present cesspool waste disposal situation to continue to be utilized was unreasonable and likely to be detrimental to the environment and public water resources.



Patricia Weathersby
Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see Article VII, Section 703 of the Town of Rye Zoning Ordinance. Any work commenced prior to the expiration of the 30 day rehearing appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

Draft NOTICE OF DECISION

Applicant/Owner:

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

Property:

421 South Road, Tax Map 4, Lot 31

Property is in the Single Residence District and Aquifer and Wellhead Protection District

Application case:

Case # 13-2017

Date of decision:

June 7, 2017

Decision:

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

(1) a 17' x 16' wetlands crossing 51 ft from a vernal pool where a 100 ft setback is required;

(2) 2,900 s.f. of disturbance within the 100' vernal pool buffer; and

(3) 3,510 s.f. of disturbance within the 75' wetlands buffer (some overlap of buffers).

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

1. The lot consists of 3.86 acres which the applicant plans to combine with other parcels for a total development parcel of approximately 59 acres. Proposed Lot 2 does not yet exist but is part of the proposed subdivision containing a total of 16 building lots. The relief requested is not essential to the productive use of the land as the development parcel may continue to be developed into at least 15 lots.
2. Economic advantage is the sole reason for the requested special exception;
3. The proposed driveway which crosses wetlands and disturbs both vernal pool and wetlands buffers, is reasonably likely to be detrimental to the environment and/or public water resources;
4. Construction of the driveway involves the addition of fill in the wetland and vernal pool buffers, grading, installation of bridge footings and erection of bridge, the effects of which are reasonably likely to be detrimental to the environment and/or public water resources;

5. The proposed driveway crossing the wetlands will be utilized by construction vehicles, cars, delivery trucks, septic trucks and other maintenance vehicles which carry risks of contaminating the wetlands by leaking or spillage;
6. The requested driveway enables the development of Lot 2 for a single-family home with associated septic system. While such uses are physically located outside the environmental buffers, proposed lot 2 consists primarily of wetlands, a vernal pool and associated buffers and at least the buffers will be likely utilized by the proposed homeowner during normal use. In addition, construction of the home and septic system will involve the addition of fill, grading and other construction activities. Such use and development have the potential to detrimentally affect the quality of the wetlands, vernal pool and aquifer due to potential inadequate maintenance, runoff, pets and nonadherence to subdivision conditions designed to protect the wetlands and vernal pool;
7. Construction and maintenance of the proposed driveway may negatively affect the wetland and/or public water resources;
8. The proposed driveway is injurious and detrimental to the neighborhood;
9. The proposed driveway is not in harmony with the general purpose and intent of the zoning ordinance nor in accordance with the general or specific rules contained therein.

Patricia Weathersby
Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen, see Article VII, Section 703 of the Town of Rye Zoning Ordinance. Any work commenced prior to the expiration of the 30 day rehearing appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

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

Property:

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

Application case:

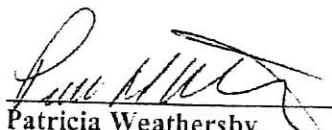
Case # 14-2017

Date of decision:

June 7, 2017

Decision:

The Board unanimously voted to continue the applicant's request for a Variance from Section 301 for property located at Tax Map 4, Lot 25 to permit a driveway within the following: 1) a 17' x 16' wetlands crossing 51ft from a vernal pool where a 100 ft setback is required; (2) 2,900 s.f. within the vernal pool buffer where a 100 ft buffer is required; (3) 3,510 s.f. within the wetlands buffer where a 75ft buffer is required to the June 21, 2017 meeting.


Patricia Weathersby,
Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

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

Property:

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

Application case:

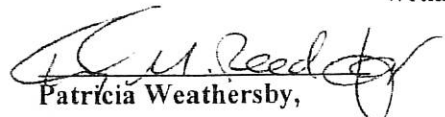
Case # 16-2017

Date of decision:

June 7, 2017

Decision:

The Board unanimously voted to continue the applicant's request for a Variance from Section 301.8 B (1) & (7) to allow for a porch 95' from the wetland where 100' is required to the June 21, 2017 meeting.


Patricia Weathersby,
Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Carmen & Katherine Place

Property:

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

Application case:

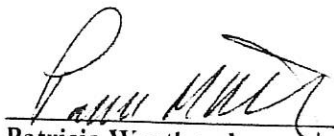
Case # 17-2017

Date of decision:

June 7, 2017

Decision:

The Board unanimously voted to continue the applicant's requests for Variances from 603.1 for expansion of part of the existing non-conforming structure; from Section 204.3 C for an addition 22' from the front boundary of Fairhill Ave and a garage 21.6' from the front boundary of Eagle Rock Road where 30' is required; from Section 204.3 B for an addition 16.6' from the side property line where 20' is required; and from Section 304.5 for dwelling coverage where 11.7% exists, 17.1% is proposed and 15% is allowed; from Section 301.8B (2) for a septic tank 65' and a leachfield 62.3' from wetlands where 75' is required; and from Section 202.5 for a leachfield setback of 14.4' of rear property line where 20' is required. Applicant requests relief from the Building Code Section 7.9.2.2 for a septic tank that is 65' and a leachfield that is 71.4' from wetlands where 75' is required to the June 21, 2017 meeting.



Patricia Weathersby,
Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see Article VII, Section 703 of the Town of Rye Zoning Ordinance. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

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

Property:

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

Application case:


Case # 18-2017

Date of decision:

June 7, 2017

Decision:

The Board unanimously voted to continue the applicant's requests for Variances from Section 603.2 to tear down an existing building and replace with new; and from Section 301.8B (1) and 301.8B (7) for a driveway 56' from tidal marsh where 100' is required; and for a building 63.8' from the tidal marsh where 100' is required; from Section 203.3B for a building 15.2' from the side property line where 20' is required; and from Section 203.3C for a building 35.2' from the front property line where 40' is required to the June 21, 2017 meeting.


Patricia Weathersby,
Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see Article VII, Section 703 of the Town of Rye Zoning Ordinance. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Stephen & Adela Carter

Property:

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

Application case:


Case # 19-2017

Date of decision:

June 7, 2017

Decision:

The Board unanimously voted to continue the applicant's request Variances from Section 203.3A for a shed 10' from the rear property line where 30' is required and from Section 203.3B for shed 10' from the side property line where 20' is required to the June 21, 2017 meeting.


Patricia Weathersby,
Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see Article VII, Section 703 of the Town of Rye Zoning Ordinance. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

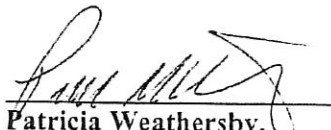
Applicant/Owner: Glenn Walker & Elizabeth Fairchild

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

Application case: Case # 20-2017

Date of decision: June 7, 2017

Decision: The Board unanimously voted to continue the applicant's request for a variance from Section 510.3 to allow for an 8ft fence where 6ft is allowed to the June 21, 2017 meeting.


Patricia Weathersby,
Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see Article VII, Section 703 of the Town of Rye Zoning Ordinance. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Richard F. Carely on behalf of 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 Single Residence District

Application case:


Case # 21-2017

Date of decision:

June 7, 2017

Decision:

The Board unanimously voted to continue the applicant's request for Variances from Section 603.1 for expansion of a non-conforming building; Section 204.3C for addition of second floor 11' +/- within the front boundary where 13' exists and 22.2' is required; from Section 204.3 C for an outdoor shower within the 22.2' Breakers Road front boundary; from Section 204.3B for addition within the side boundary 8.6' where 8.6' exists and 20' is required; from Section 304.5 for building coverage of 19.1% where 16.8% exists and 15% is allowed; from Section 500.2 for two (2) parking spaces where none exist and from Section 500.3 for the location of the parking spaces located within the front yard to the July 5, 2017 meeting.


Patricia Weathersby,
Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see Article VII, Section 703 of the Town of Rye Zoning Ordinance. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

6-7-17

Stephanie Patrick-Chalfant
410 South Road

I would like to read an excerpt that is informative to this deliberation tonight from the **Conservation and Wetland Buffers** section of the most recent Rye Newsletter.

The wetland buffer is a setback area between a water source and any upland development. The buffer maintains the natural vegetation cover along the waterway, which is an essential part of the aquatic ecosystem. The wetland buffer allows for the protection of property and the conservation of natural resources.

The conservation of natural resources includes those aesthetic values associated with wetlands and the crucial role they play in the recharging of our groundwater supply.

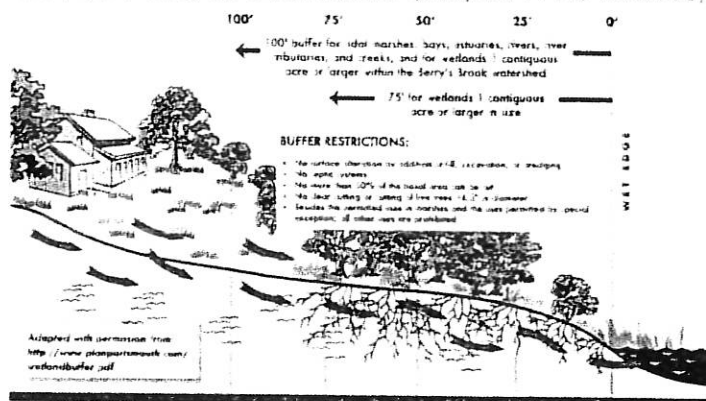
An economic agreement is made that the protection of these buffers is the least expensive way for towns to protect homes and roads from flood damage, manage floodwater, and to protect water quality.

Conservation and Wetland Buffers

The Town of Rye consists of 65% wetlands. This fact makes it our responsibility to understand the inherent value of wetlands and wetland buffers. The wetland buffer is a setback area between a water source and any upland development. The buffer maintains the natural vegetation cover along the waterway, which is an essential part of the aquatic ecosystem. The wetland buffer allows for the protection of property and the conservation of natural resources. The conservation of natural resources include those aesthetic values associated with wetlands and the crucial role they play in the recharging of our ground water supply. An economic agreement is made that the protection of these buffers is the least expensive way for towns to protect homes, and roads from flood damage, manage floodwater, and to protect water quality. There are two important buffer

zones depicted in this diagram. Each buffer zone has specific requirements for its protection. For any questions on interpretation of these buffer restrictions please contact the Building Inspector or request a meeting with the Conservation Commission

TOWN OF RYE EXISTING BUFFER ORDINANCE (adapted 1977, amended)





WARY LLC
214 W. 10th Street
STANFORD, N.H. 03805
WETLANDS ASSOCIATES, PLLC
1000 W. 10th Street, Suite 200
STANFORD, N.H. 03805



① Temporary Logging Road - Permit Expired Spring 2015.

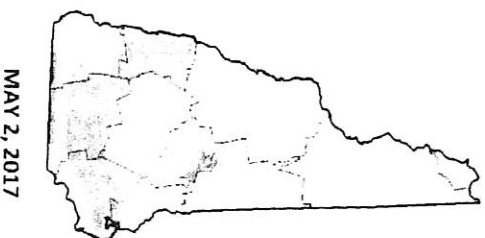
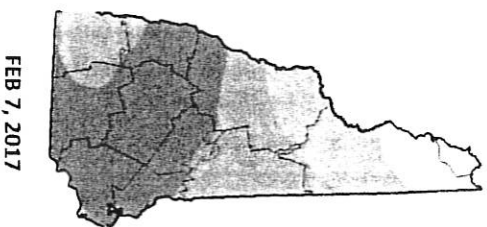
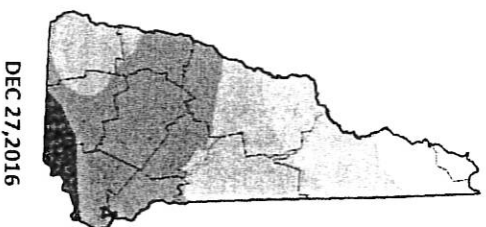
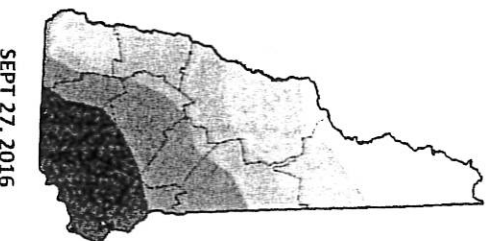
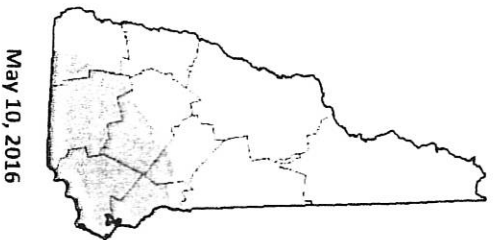
- WETLAND AREAS
- 75' WETLAND SETBACK
- 100' WETLAND SETBACK
- OVERLAP OF SETBACK AREAS

④ Proposed Road drainage from both sides runs on riprap swale into Vernal Pool.

③ Septic Plume and Surface and storm runoff from impervious surfaces on Lot 1 flow into wetlands and Vernal Pools on lot 2.

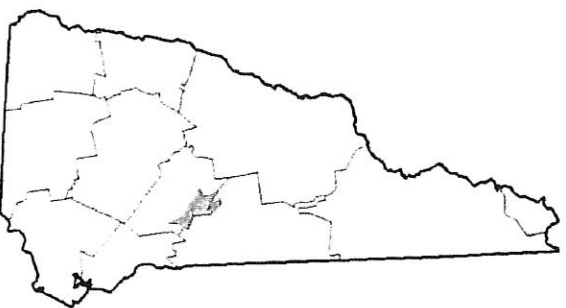
attach 6/7/17

[illegible]



U.S. Drought Monitor New Hampshire

May 9, 2017
(Released Thursday, May. 11, 2017)
Valid 8 a.m. EDT



	None	D0	D1	D2	D3	D4
Current	100.00	0.00	0.00	0.00	0.00	0.00
Last Week 05-02-2017	79.67	20.33	0.00	0.00	0.00	0.00
3 Months Ago 02-07-2017	8.41	16.24	30.75	44.60	0.00	0.00
Start of Calendar Year 01-03-2017	8.41	16.24	30.42	44.93	0.00	0.00
Start of Water Year 09-27-2016	15.33	22.23	21.95	21.22	19.27	0.00
One Year Ago 05-10-2016	71.61	28.39	0.00	0.00	0.00	0.00

Drought Conditions (Percent Area)

Intensity

- D0 Abnormally Dry
- D1 Moderate Drought
- D2 Severe Drought
- D3 Extreme Drought
- D4 Exceptional Drought

The Drought Monitor focuses on broad scale conditions. Local conditions may vary. See accompanying text summary for further statements.

Author

Paul Fuchs
National Drought Mitigation Center



<http://droughtmonitor.unl.edu/>

I am Anne Hodsdon, 427 South Road

I am here tonight along with my fellow neighbors and abutters as we share a number of common concerns that need to be raised as a group. Toward a goal of efficiency, the discussions by abutters and concerned Rye residents represent consensus of thought of the entire group. We believe the special exception and variance do not meet the requirements of Rye's regulations and more importantly are **premature**.

We urge the Board of Adjustments to **deny this special exception and variance** for a driveway crossing **through** a valuable and historic wetland ecosystem **as it fails** to satisfy various criteria for the special exception and variance.

We have read the application and it is **complex and multi layered** as the owner, the Chisholm Family Trust, Tax Map 4, lot 25, is not the applicant, but rather, Harbor Street LLC. The application intertwines special exception and variance criteria from the property owner's perspective with that of the applicant's intentions. Harbor Street LLC's intentions are subject to actually closing and obtaining ownership of several Tax Map 4 parcels (25, 27, 32) and gaining Planning Board approval for a major housing development combining these parcels along with parcel 31 for a proposed 17 lot subdivision.

First, given the fact that there are significant seasonally wet, poorly draining soil areas along with some designated wetlands on, and adjacent to, proposed lot 2, and that this land has already been disturbed by the logging road, which according to Rye's regulations should have been restored by the **owner** over two years ago and coupled with last year's severe drought, it is impossible to totally assess the size of the regulation protected areas, the vernal pools and their respective buffers at a **high water state** until the **restoration** has been completed and a season cycle has occurred. Hence, it is **premature** to truly know that **the impact** will be only **minimal**. In addition, the fact that these wet parcels and vernal pools exist within a complex ecosystem completely within Rye's Wellhead Protection District where the natural topography has water flowing into an abutting Nature Conservancy land parcel that protects a rare Atlantic White Cedar swamp **as well as** being the habitat of the rare Hessel's Hairstreak butterfly, this application is **not in harmony** with the **general intent** of our zoning ordinance. **Nor is it in the spirit** of the ordinance as there is **no way to guarantee** that there will not be any **increase in the long-term susceptibility to potential pollutants**. **Thus this application is CONTRARY to public interest and injurious to the neighborhood.**

Second, the application is purely for **further economic gain**. The owner of the parcel has over 50 acres on which to potentially apply for permits to develop. This application **to maximize** the lot potential for Harbor LLC is thus only to increase the sale proceeds to the owner.

I **respectfully** submit my comments in writing for the record along with data from 1) the U.S. Drought Monitor NH, 2) Extreme Precipitation Estimates from the Northeast Regional Climate Center and 3) on behalf of Dr. Bud Barrett, a concerned Rye resident, an exhibit to accompany his comments here tonight.

Bob Siener
Abutter 399 South Road

EXHIBIT 1

Exhibit 1 was submitted by the Developer on March 31, 2017 to the Planning Board. Of note is the **flow path** line from the legend originating at South Road and indicating flow across the entire proposed site to the back wetlands.

The new legend describes:

- Vernal Pools with no coloring
- Wetlands in blue
- Vernal Pool setback in green
- Wetland setback in yellow

EXHIBIT 2

Exhibit 2 was mailed to an abutter in June of 2016 and represents the preliminary design of 22 lots.

The legend again describes the exact Vernal Pool and the exact Vernal Pool setback in green.

The Wetlands are described in blue and as you can see vary markedly from Exhibit 1. Thus the Wetland setbacks also vary markedly as represented in yellow with hash lines.

The significant increase in wetlands was clearly evident to those that walked the site in late May. The site walk revealed the importance of mapping high water levels for vernal pools as it represents conditions on the land from effects of more normal precipitation rather than conditions during Extreme drought.

EXHIBIT 3

Exhibit 3 is PREDICTED NITRATE PLUMES WITH ADVANCED TREATMENT and was submitted by StoneHill Environmental, Inc. to the PB prior to the Work-session in February.

The septic plume from Lot 1 flows through the Vernal Pool #1 and adjacent to Vernal Pool #1^A on Lot 2 and joins the septic plume from Lot 2. Per Exhibit 3 the combined plumes flow northeast through the described expanded wetlands on Exhibit 2 and ultimately to the back wetlands.

Discussion regarding ledge locations, wetlands locations, removal of the temporary logging road and Designated Leach Area locations for determination of the 17 proposed lots is ongoing with the Planning Board.

The abutters urge the Zoning Board of Adjustment to deny the applications for Special Exception and Variance relief under Section 301 of the Wetlands Conservation District to permit construction of a driveway across Vernal pool and Wetland buffers as these may be understated.

The abutters urge the ZBA to protect the integrity of the Vernal Pools and wetland ecosystem, and thus the groundwater quality on the site and on surrounding land of abutters.

Cumulative Nitrate Concentrations at Development Boundary

Lot 1 = 0.77	Lot 3 = 2.91
Lot 2 = 2.89	Lot 4 = 3.62
3.66 mg/L	6.13 mg/L
Lot 18 = 1.47	Lot 17 = 0.75
Lot 5 = 4.49	Lot 11 = 1.10
5.96 mg/L	Lot 9 = 3.23
Lot 1 = 0.75	5.08 mg/L
Lot 14 = 0.92	
Lot 17 = 1.82	
Lot 6 = 5.74	
9.28 mg/L	

Note: See Table 1 for details. Nitrate values are very conservative and assume no reduction in nitrate concentration due to denitrification or retardation within and downgradient of the septic system or vegetation uptake of nitrogen.



Legend:

Predicted 15 mg/L to 10 mg/L nitrate plume length for individual advanced treatment septic systems.

Potential Nitrate Plume path with individual and cumulative nitrate concentration (mg/L) at development boundary.



Approximate Scale in Feet

Figure 1

PREDICTED NITRATE-N PLUMES WITH ADVANCED TREATMENT

Stoneleigh Preserve
South Road
Rye, NH

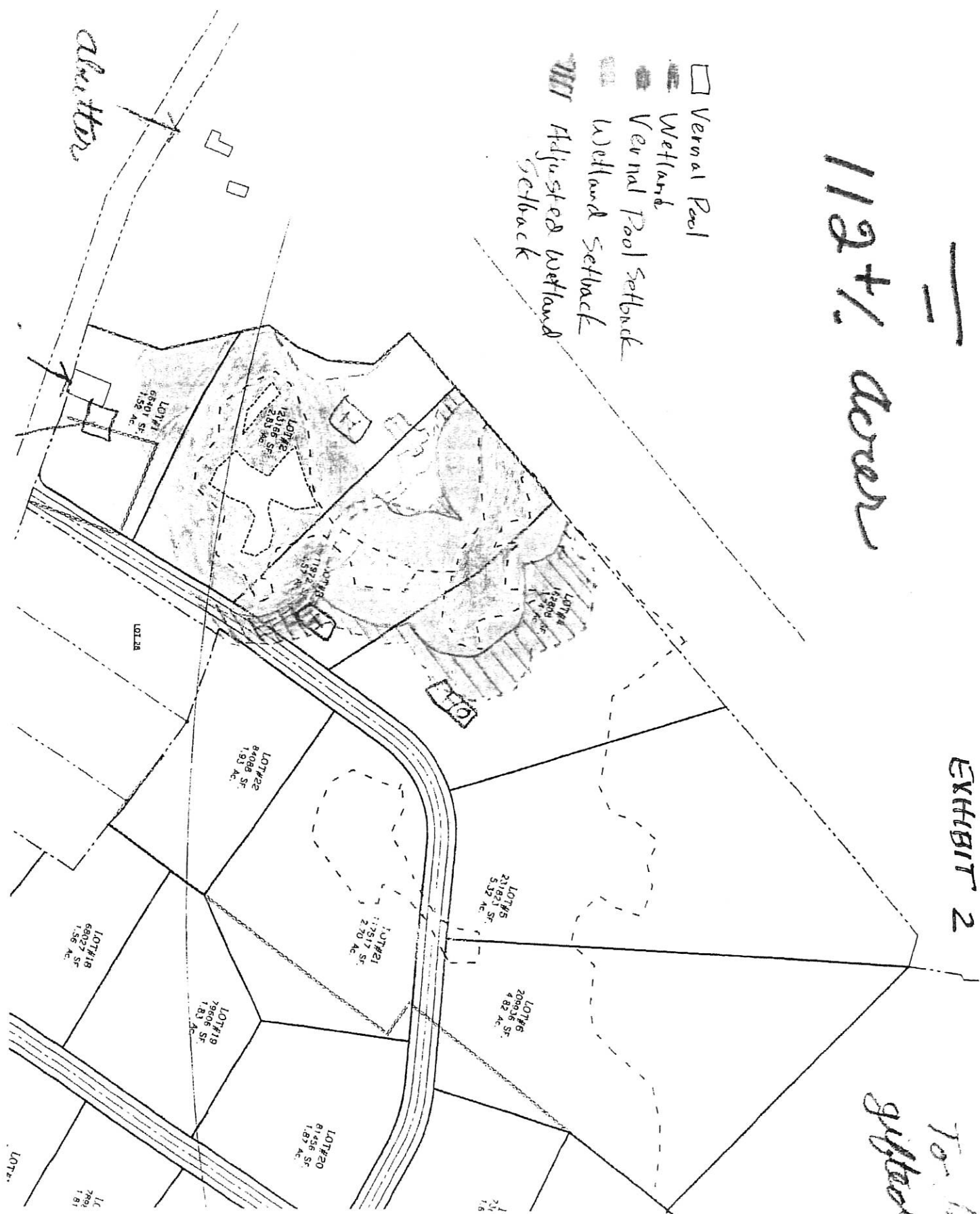
Prepared by:
StoneHill Environmental, Inc.
Project No. 16064

- Notes:
1. Basemap source: "Display Site Plan, Plan for Residential Development, South Road, Rye, NH" prepared by Doucal Survey, Inc., June 2016.
 2. Nitrate plume orientations based upon 12/21/16 groundwater elevation measurements by StoneHill.

To
Jules

112+/- door

- ☐ Vernal Pool
Wetland
Vernal Pool Setback
Wetland Setback
Adjusted Wetland
Setback



Jeff Ross
333 West Road

EXHIBIT 1A

Exhibit 1A is a copy of the map introduced earlier of Lot 2 with a Cross-Section Starting on an abutters land, through the proposed house and High Tech raised septic field, the Vernal and Wetland Buffers, the Wetland and lastly the Vernal Pool.

EXHIBIT 1A CROSS- SECTION

Surface and Storm Runoff can be noted from the impervious surfaces of the house onto to abutter property.

Surface and Storm runoff will occur from both the impervious surfaces of the proposed house and raised High Tech Septic system directly into the Vernal Pool Buffer and ultimately the Vernal Pool itself.

Of note is the data collected by Beals Associates from Test Pits # 5,6,7 & 8

TP # 5 — ESHWT at 25 in.

TP # 6 --- ESHWT at 26 in.

TP # 7 --- ESHWT at 24 in.

TP # 8 --- ESHWT at 30 in.

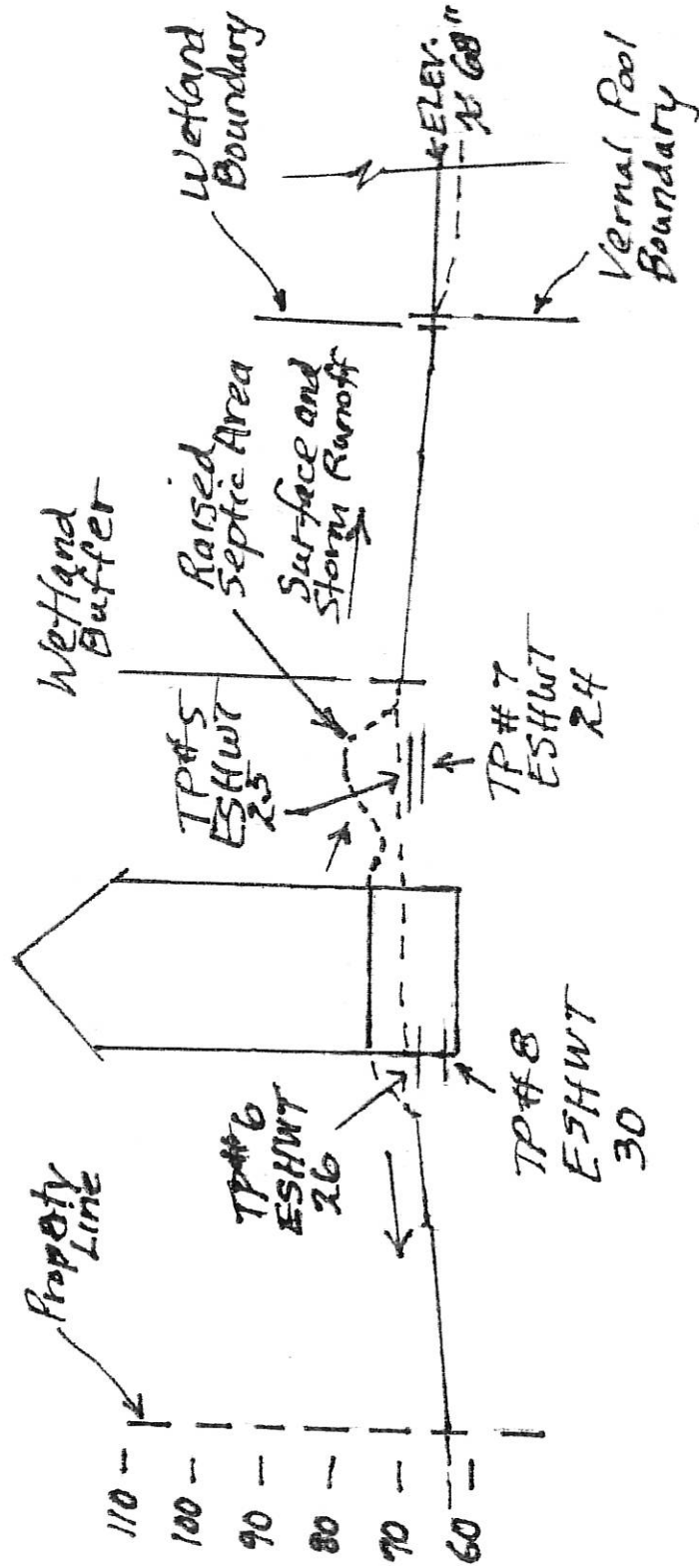
It appears the proximity of the ESHWT may require a sump running for a significant part of the year.

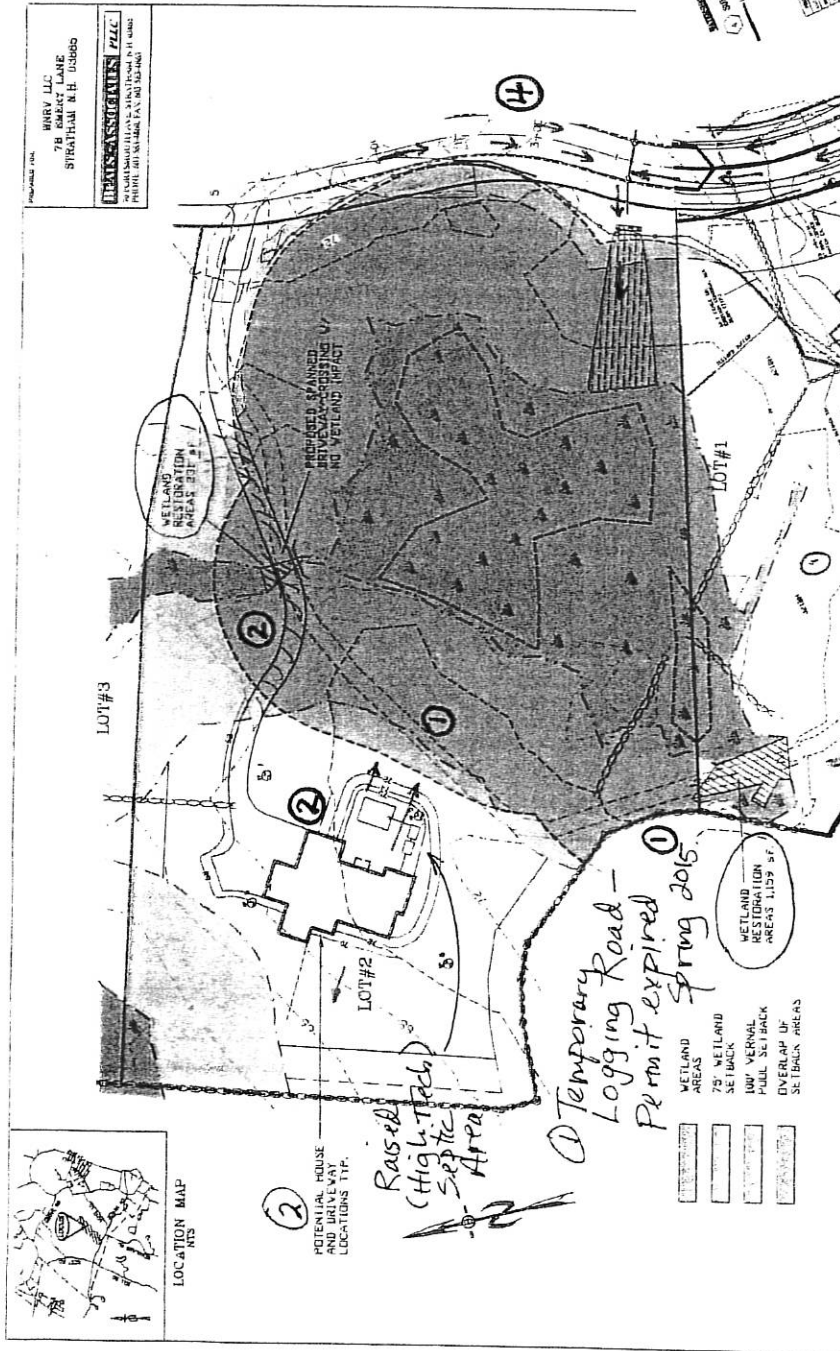
Where would the outlet to the sump on Lot 2 be located to avoid additional flow to abutter land or the wetland ecosystem that surrounds this house on all sides?

We urge the Board of Adjustments to deny this special exception and waiver for a driveway crossing through this valuable and historic wetland ecosystem.

X-Section Exhibit 1A - Lot 2

421 South Rd Proposal







④ Proposed Road drainage from both sides of road runs on riprap swale into Vernal Pool.


③ Septic plume and surface and storm runoff from impervious surfaces on Lot 1 flow into Wetlands and Vernal Pools on Lot 2.

WENRY, LLC
70 FINEY LAKE
STRATHAM N.H. 03866
Tel: 603/883-1400, Fax: 603/883-1061

WATERSHED KEY

 SUBCATCHMENT

 REACH

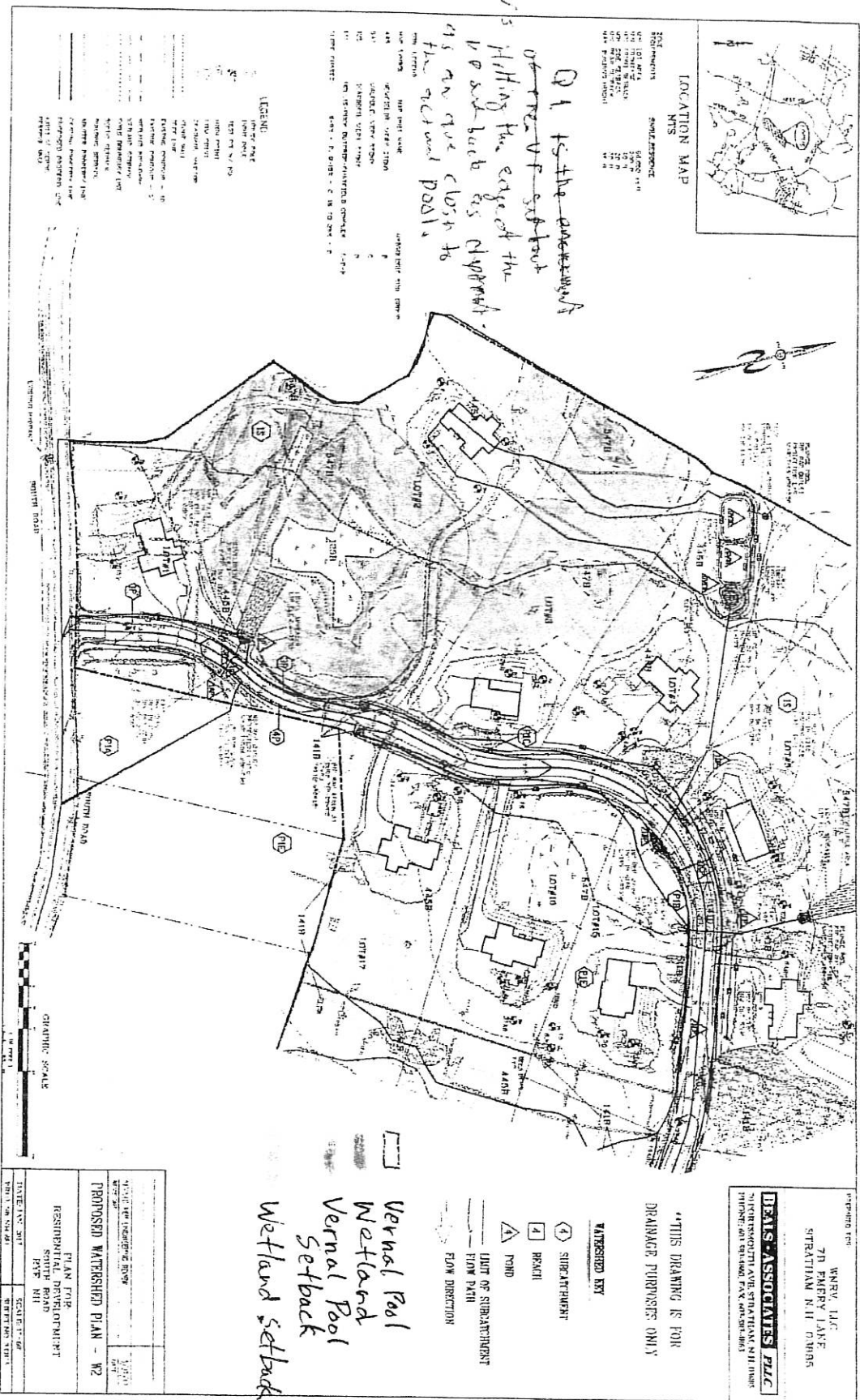
 FORD

LIST OF SUBCATCHMENT

FLOW PATH

FLOW DIRECTION

Vernal Pool
Wetland
Vernal Pool
Setback
Wetland Setback



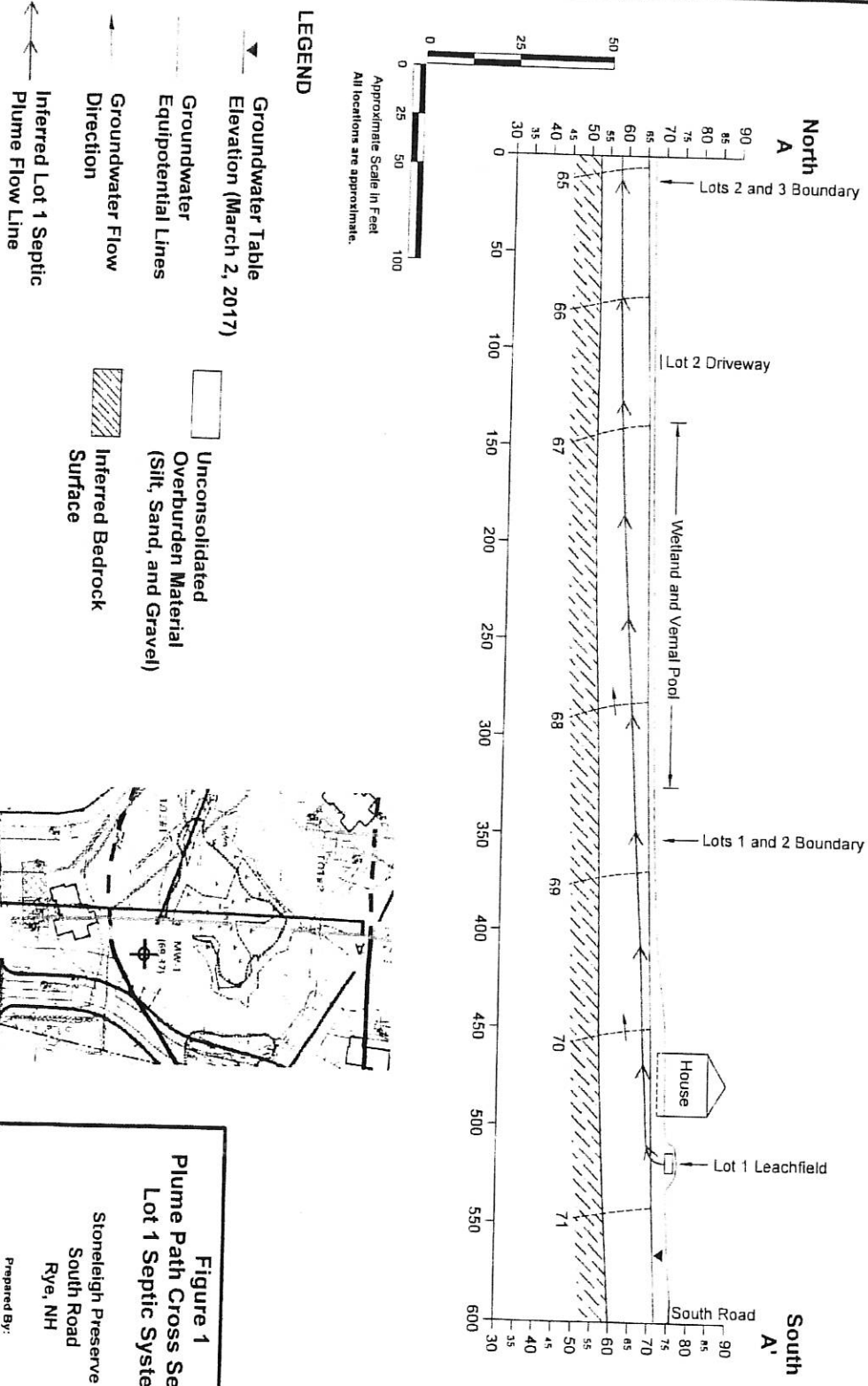


Figure 1
Plume Path Cross Section
Lot 1 Septic System

Stoneleigh Preserve
 South Road
 Rye, NH

Prepared By:
 Stonehill Environmental, Inc.
 Project No. 16064
 April 2017

BEALS • ASSOCIATES PLLC
50 POKESMOUTH AVE., SHELHAM, N.J. 07083
PHONE: 609 583-4860, FAX: 609 583-4861

LECHER

[illegible]

THE PHARMACEUTICAL INDUSTRY HAS BEEN A MAJOR FORCE IN THE DEVELOPMENT OF THE MODERN MEDICAL SCIENCE. THE PHARMACEUTICAL INDUSTRY HAS BEEN A MAJOR FORCE IN THE DEVELOPMENT OF THE MODERN MEDICAL SCIENCE. THE PHARMACEUTICAL INDUSTRY HAS BEEN A MAJOR FORCE IN THE DEVELOPMENT OF THE MODERN MEDICAL SCIENCE.

[illegible]

DATE _____
 PREPARED BY _____
 APP. BY _____
 SIGNED BY _____

NAME	UNIT	MISS
MISS ROSE		

WALFIRE, VERY SILENT	521 B
SLAMMEL, VERY SILENT	521 C
SL-15, BLACK BALUNAP,	124 B AND D
2407FILL @ CLINTON, CA	

PULSE DEVELOPMENT (UNUSUAL) CALCULATIONS	
UT AREA	377 m
ILLUSTRATED AREA	377 m (44%)

LOT 2 DEVELOPMENT PLAN

STONELEIGH PRESERVE
SOUTH ROAD
RYE, NH

DATE MARCH 2017	SCALE 1"=24'
ROLL NUMBER 101	SHEET NO. 1 OF 1

Figure 1 is a schematic of distance buffer which is to be 75 feet in width, and is to be placed where applicable and suitable to the local conditions. The buffer is to be placed in the same manner as the section shown as a set back in the building setbacks. The buffer is to be placed in the same manner as the section shown as a set back in the building setbacks. The buffer is to be placed in the same manner as the section shown as a set back in the building setbacks.

LOCATION MAP

GRAPHIC SCALE:

1. THE PARTIAL

[illegible]

INDUSTRIAL WORKERS WORLD WIDE, LTD., REQUESTED SUBDIVISION PLANS FOR THE STOCKPILE PRESERVE SUBDIVISION FOR MORE INFORMATION ABOUT THE RESTRICTIONS WHICH APPLY TO THIS LOT. DECLARATION OF CONDOMINIUM, COVENANTS AND RESTRICTIONS, UNLAWFUL EASEMENT, 31 UPTOWN AVENUE, 10TH FLOOR, EAST CHICAGO, ILL. 60640.

Carol Menard
Abutter 495 South Road

The colored map of Lot 2 illustrates the 4-sided encircling and confinement of the Vernal Pools and buffers by the proposed development. The impacts start with the Vernal Pools on Lot 2. This large and presently intact, naturally functioning wetland ecosystem continues to the extensive wetlands reaching to the Atlantic Cedar Swamp and Baileys Brook, and ultimately the Atlantic Ocean.

The driveway crossing under discussion is located:

- in a Vernal Pool and Wetland Buffer under jurisdiction of the Wetlands Conservation District
- in the Wellhead Protection Overlay District with great concern for increased long-term susceptibility to pollution of groundwater, proximate private and public wells (S 306.5C1), and flooding of land on the site and downstream of the proposed development site
- third, south of the Aquifer Protection Overlay District, which shares the same concerns and standard
- and lastly, in a non-approved Lot #2 of a 17 lot Major Subdivision

Att. Loughlin states in the letter in support of the Special Exception to the ZBA that:

"This application is not being filed simply to overbuild an area of land for economic advantage...with the use of a driveway which will have no significant impact to the wetlands/buffer." These are two distinct items to be addressed separately by the Zoning Board of Adjustment. With all due respect, to the abutters and many concerned Rye residents who have spoken here tonight, it appears to entirely be filed to overbuild a sensitive area of land for economic advantage. Discussion continues before the Planning Board on the possible need for variances for proposed road designs, ledge locations, Wetland and Vernal Pool locations and boundaries, Designated Leach Area locations, drainage analysis and design elements, and thus lot locations.

Lot 2 is not an approved lot.

--the driveway crossing is not essential to productive use of the land as Lot 2 represents just one of 9 lots for which the owner and developer are seeking approval for financial enurement. Most of the lots have high wetland and ledge features prohibitive to residential development. Loss of Lot 2 leaves 8 other possible lots and more than a fair economic return.

Maps presented today indicate a larger, more connected wetland ecosystem than has been presented to date. The increase in wetlands and buffers introduced tonight by Bob appears to indicate more impact to the driveway crossing on Lot 2. Current plans under deliberation for the road and lot designs are based on Extreme Drought conditions present in 2016. In sharp contrast, a substantial increase in water was evident on the ground across the entire site from more normal rainfall conditions this spring. High water changes to the vernal pools and wetlands, and questions to determine how significant increases in new water draining off the site would be managed were the main focus of discussions on the site walk on May 25th.

In addition, some changes to the configuration of Lots 3 and 4 may be necessary with adjustments potentially more suitable than violating the integrity of the Vernal Pool Buffer on Lot 2.

We urge the Board of Adjustment to deny this special exception and waiver for a driveway crossing through this valuable and long-standing wetland ecosystem. The land under discussion has throughout the centuries up to the latest logging operation in 2013, not been developed, no doubt influenced by extensive water and ledge. Rather, the land has provided benefit as forested wetlands, with the only exception the barn proximate to South Road. Please protect the integrity of all buffers and wetlands on this site as the Wellhead ordinances provide, and preserve the economic and aesthetic benefits of flood protection and water production for all present and future Rye residents.

Susan Ross
333 West Road

SECTION 306.2: The Purpose of the Aquifer and Wellhead Protection District is to protect, preserve and maintain the groundwater resources and groundwater recharge areas in Rye.

730+ individual Rye Residents have signed petitions to protect Rye Water from possible pollution and give support for the Planning Board to deny approval of 421 South Road Proposed Major Subdivision.

Identified concerns (SECTION 306.2: A,B,C,D):

- The proposed major subdivision at 421 South Road lies 100% in the Well Head Protection Overlay District and South of the Rye Aquifer Protection Overlay District which requires the same high standard for development.
- Future water supply
- Increased risk of flooding from development due to extensive existing wetlands and flow across site and subsequent risk for pollution
- Impact of Bedrock removal on private wells and water quality
- Risk of pollution to public and private wells from septic and surface pollutants in perpetuity and impact to resident safety and associated costs
- Impact of industrial and extensive drainage elements on the present semi-rural character of Rye due to high amount of existing and new water on the site

The Gold Standard is Rye's clean water.

As Mr. Tim Stone of StoneHill Environmental, Inc. stated in discussion during the Work-session on February 8th, "it is not really known where the wells are drawing water from."

****We urge the Board of Adjustment to deny this special exception and waiver and to protect the groundwater quality on the site and on surrounding land of abutters.**